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PART II
Section 1

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Department of the Interior

Bureau of Land Management

Revision of Regulations

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

REORGANIZATION AND REVISION OF CHAPTER

In the interest of greater efficiency and improved public service, the regulations of the Bureau of Land Management contained in Chapter I of Title 43 of the Code of Federal Regulations are being rearranged and renumbered to agree with the arrangement and the common numbering system used in the Bureau's internal directives, record files, and other paperwork controls.

There are no substantive changes. The only additions or deletions made are minor editorial changes, and the elimination of repetitions and of provisions made obsolete by law or the expiration of law. Accordingly, notice and public procedure are considered unnecessary and Title 43 of the Code of Federal Regulations is revised as set forth below.

1. The tables of contents are revised to switch chapter numbers; Chapter I to cover the regulations of the Bureau of Reclamation, and Chapter II the regulations of the Bureau of Land Management.

2. Sections 230.54 through 230.62, 230.64 through 230.100, and 230.115 through 230.121 of Part 230 and the listing of Part 230—Reclamation of Arid Lands of the United States—in the tables of contents are transferred from the regulations of the Bureau of Land Management to the Bureau of Reclamation.

3. The remainder of the regulations of the Bureau of Land Management, Chapter I of Title 43, are transferred to Chapter II. These regulations have been:

(a) Rearranged and retitled to conform to a new subject-function outline.

(b) Renumbered under an integrated paperwork management numbering system; a single system employed for the codification of regulations, internal directives, correspondence, record files, forms and reports.

(c) Revised to eliminate reference to form numbers which are being altered to key in with their respective regulation code numbers.

(d) Modernized to eliminate obsolete and repetitious material.

4. A cross-reference table for the entire Chapter II is provided as set forth below. This table lists the old part and section numbers and the newly redesignated numbers.

It is the Department's intent in this revision to make no substantive changes in the regulations.

STEWART L. UDALL,
Secretary of the Interior.

REDESIGNATION TABLE

Old	New
51.1	2031.1
51.1 footnote	2031.2
52.1	1821.3–6
60.1	1821.9–1
60.2	(deleted)
60.3	1824.9–1
60.4	1862.7
60.5	1821.9–2
61.1	2221.9–1(a)
61.2	2221.9–2
61.3	2221.9–3
61.4	2221.9–4(a)(1)
61.5	2221.9–4(a)(2)
61.6	2221.9–4(a)(3)
61.7	2221.9–4(a)(4)
61.8	2221.9–4(a)(5)
61.9	2221.9–4(b)(1)
61.10	2221.9–4(c)
61.11	2221.9–4(b)(2)
61.12	2221.9–4(d)
61.13	2221.9–4(e)
61.14	2221.9–4(f)
61.15	2221.9–4(g)
61.16	2221.9–4(h)
61.17	2221.9–1(b)
62.1	2235.2–1
62.2	2235.2–2
62.3	2235.2–3(a)
62.4	2235.2–3(b)
62.5	2235.2–4(a)
62.6	2235.2–4(b)
62.7	2235.2–4(c)
62.8	2235.2–5
62.9	2235.2–6
62.10	2235.2–7
62.11	2235.2–8
62.12	2235.2–9(a)
62.13	2235.2–9(b)
62.14	1840
63.1	4131.0–3
63.2	4131.0–2
63.3	4131.0–5
63.4	4131.1–1
63.5	4131.1–2
63.6	4131.1–3
63.7	4131.1–4
63.8	4131.2–1
63.9	4131.2–2
63.10	4131.2–3
63.11	4131.2–4
63.12	4131.2–5
63.13	4131.2–6
63.14	4131.5–1
63.15	4131.2–7(a)
63.16	4131.2–7(b), (c), (d)
63.17	4131.2–8
63.18	4131.2–7(e), (f)
63.19	4131.2–7(g), (h)
63.20	4131.2–9(a)
63.21	4131.2–9(b)
63.22	4131.3, 2013.9–1
63.23	9239.3–3(b)
63.24	4131.5–2
63.31	4132.0–3

REDESIGNATION TABLE—Continued

Old	New
63.32	4132.0–5
63.33	4132.2–1
63.34	4132.1–1
63.35	4132.2–2
63.36	4132.1–2
63.37	4132.1–4
63.38	4132.1–3
63.39	4132.2–3
63.40	4132.2–4(a)
63.41	4132.2–4(b)
63.42	4132.2–5
63.43	4132.2–6
63.44	4132.2–8
63.45	4132.2–9
63.46	4132.2–7
63.47	4132.2–9
63.48	4132.3
63.49	4132.1–5, 2013.9–2
63.50	4132.3
63.51	4132.4, 9239.3–3
64.1	2233.9–1(a)
64.2	2233.9–1(b)
64.3	2233.9–1(c)
64.4	2233.9–1(d)
64.5	2233.9–1(e)
64.6	2233.9–1(f)
64.7	2233.9–2(a)
64.8	2233.9–2(b)
64.9	2233.9–2(c)
64.10	2233.9–2(d)
64.11	2233.9–2(e)
64.12	2233.9–2(f)
64.13	2233.9–3(a)
64.14	2233.9–3(b)
64.15	2233.9–3(c)
65.1	2211.9–1(a)
65.2	2211.9–1(b)
65.3	2211.9–1(c)(1), (2)
65.3a	2211.9–1(c)(3)
65.3b	2211.9–1(c)(4)
65.3c	2211.9–1(d)
65.4	2211.9–1(e)
65.5	2211.9–2(a)
65.6	2211.9–2(b)
65.8	2211.9–2(c)
65.9	2211.9–3(a)
65.10	2211.9–3(b)
65.11	2211.9–4(a)
65.12	2211.9–4(b)
65.13	2211.9–4(c)
65.14	2211.9–1(f)
65.15	2211.9–5(a)(1)
65.16	2211.9–5(a)(3)
65.17(a)	2211.9–5(a)(2)
65.17(b)	2211.9–5(b)
65.17(c)	2211.9–5(c)
65.18	2211.9–7(c)
65.19	2211.9–5(d)
65.20	2211.9–6(a)
65.21	2211.9–6(b)
65.22	2211.9–6(c)
65.23	2211.9–7(a)
65.24	2211.9–2(d)

REDESIGNATION TABLE—Continued

Old	New
65.26	2211.9–7(d) 1824.9–2
65.26	2211.9–7(d)
65.27	1824.9–3
65.29	2211.9–8(a)
65.30	2211.9–8(b)
66.1	2023.5–1(a), (b), (c)
66.2	2023.5–1(d)
66.3	2023.5–2
66.4	2023.5–3
66.5	2023.5–4
67.1	2212.03(c)
67.2	2212.07(b)(1)
67.3	2212.07(b)(2)
67.4	2212.9–3
67.5	2212.9–1 (a) to (f)
67.6	2212.9–1(g), 2013.9–6
67.7	2212.9–2
67.8	2212.9–4
67.9	1840
67.11	2013.9–3
67.12	1855.1 to 1855.9
67.13	2325.1
69.1	3400.1
69.2	3400.2
69.3 to .7	(deleted)
69.8	3450.5
69.9 to .10	(deleted)
69.11	3636.1
69.11 (footnote 8)	3637.1
69.12 to .20	(deleted)
72	(deleted)
73	1840, 1850
74.1	2234.2–1(a)(1)
74.2	2234.2–1(a)(2)
74.3	2234.2–1(a)(3)
74.4	2234.2–1(b)(1)
74.5	2234.2–1(b)(2)
74.6	2234.2–1(c)(1)
74.7	2234.2–1(c)(2)
74.8	2234.2–1(d)(1)
74.9	2234.2–1(d)(2)
74.10	2234.2–1(d)(3)
74.11	2234.2–1(d)(4)
74.12	2234.2–1(d)(5)
74.13	2234.2–1(d)(6)
74.14	2234.2–1(d)(7)
74.15	2234.2–1(d)(8)
74.16	2234.2–1(d)(9)
74.17	2234.2–1(d)(10)
74.18	2234.2–1(d)(11)
74.19	2234.2–1(e)(1)
74.20	2234.2–1(e)(2)
74.21	2234.2–1(f)
74.24 to .26	(deleted)
74.28 to .33	(deleted)
75.1 to 75.12	(deleted)
75.13	2245.0–3
75.14	2245.0–2
75.15	2245.0–5
75.16	2245.1–1

REDESIGNATION TABLE—Continued

Old	New
75.17	2245.1–2
75.18	2245.2
75.19	2241.0–3
75.20	2241.0–5
75.21	2241.0–2
75.22	2241.0–7
75.23	2241.1–1(a)
75.24	2241.1–1(b)
75.25	2241.1–1(c), 2013.9–5
75.26	2241.1–2
75.27	2241.1–3
75.28	2241.1–4
75.29	2241.1–5
75.30	2241.2–1
75.31	2241.2–2
75.32	2241.3
75.33	2241.4
75.34	2241.5–1
75.35 (a) to (e)	2241.5–2
75.35(f)	3687.2
75.36	1840
76.1	2222.9–1(a)
76.2	2222.9–1(b)
76.3	2222.9–1(c)
76.4	2222.9–2(a)
76.5	2222.9–2(b)
76.6	2222.9–2(c)
76.7	2222.9–3(a)
76.8	2222.9–3(b)
76.9	2222.9–3(c)
76.10	2222.9–3(d)
76.11	2222.9–4(a)
76.12	2222.9–4(b)
76.13	2222.9–4(c)
76.14	2222.9–4(d)
76.15	2222.9–4(e)
76.16	2222.9–4(f), 2013.9–4
76.17	2222.9–4(g)
76.18	1840
77.1	2024.0–3
77.2	2024.0–5
77.3	2024.1
77.4	2024.2
78.1	9180.0–3(b)
78.2	9180.1–1(a)
78.3	9180.0–3(b)(1)
78.4	9180.0–2(a)
78.5	9183.0–2(a)
78.6	9180.1–1(a)(1)
79.1	5400.0–3(e)
79.2	5461.2–1
79.3	5461.2–2
79.4	5461.2–3(a)
79.5	5461.2–3(b)
79.6	5461.2–3(c)
79.7	5461.2–3(d)
79.8	5461.2–3(e)
79.9	5461.2–4
79.10	5461.2–3(f)
79.11	5461.2–5, 9239.1–2
79.12	5461.2–6
79.14	5461.2–7
79.15	5400.0–5(a)(11)

REDESIGNATION TABLE—Continued

Old	New
79.16	5409.1–1
79.17	5409.1–2
79.18	5409.1–3
79.19	5409.1–4
79.20	5409.1–5(a)
79.21	5409.1–5(b)
79.22	5409.1–5(c)
79.23	5409.1–5(d)
79.24	5409.1–5(e)
79.25	5409.1–6
79.32	(deleted)
79.33	5400.0–3(b)(2)
79.34	5409.2–1
79.35	5409.2–2
79.36	5409.2–3
79.37	5409.2–4
79.38	5409.2–5
79.39	5409.2–6
79.40	5409.2–7
79.41	5409.2–8
80.1	2242.9–1(a)
80.2	2242.9–1(b)
80.3	2242.9–2(a)
80.4	2242.9–2(b)
80.5	2242.9–2(c)
80.6	2242.9–2(d)
80.7	2242.9–2(e)
80.8	2242.9–2(f)
80.9	2242.9–2(g)
80.10	2242.9–2(h)
80.11	2242.9–2(i)
80.12	2242.9–2(j)
80.13	2242.9–2(k)
80.14	2242.9–2(l)
80.14a	2242.9–2(m)
80.14b	2242.9–2(n)
80.15	2242.9–2(o)
80.16	2242.9–2(p)
80.17	2242.9–2(q)
80.18	2242.9–3(a)
80.19	2242.9–3(b)
80.20	2242.9–3(c)
80.21	2242.9–3(d)
80.22	2242.9–3(e)
80.23	2242.9–3(f)
80.24	2242.9–3(g)
80.25	2242.9–3(h)
80.26	2242.9–3(i)
80.27	2242.9–3(j)
80.28	2242.9–4
80.100	2242.9–5 (a) to (j)
80.101	2242.9–5(k)(1)(2)
80.102	2242.9–5(k)(3)
81.1	2213.0–3
81.1a	2213.1–1(a)
81.1b	2213.1–1(b)
81.1c	2213.1–1(c)
81.1d	2213.1–1(d)
81.2	2213.1–2(a) to (b)
81.2a	2213.1–2(c)
81.3	2213.0–6
81.4	2213.1–2(e)
81.5	2213.2

REDESIGNATION TABLE—Continued

Old	New
81.6	2213.1–2(d)
81.7	2213.1–3
81.8	2213.1–4
81.9	2213.3
101.1	1821.2–2(a) to (c)
101.2	2013.1
101.3	1821.4–1
101.4	1821.4–2
101.5	1821.4–3
101.6	1821.7–1
101.7	1821.7–3
101.8	(deleted)
101.9	1821.1, 1861.1
101.10	1821.5–1
101.11	1821.5–2
101.12	1861.2, 1823.4(a)
101.13	1823.4(b)
101.14	2226.1–4(e)
101.15	1821.5–3, 3450.1(c)
101.17	1821.5–4
101.18	1821.3–1
101.19	1821.2–4
101.20	1821.2–1(a)
101.21	1810.1
102.1	2023.1–1
102.2	2023.1–2
102.3	2023.1–3(a)
102.4	2023.1–3(b)
102.5	2023.1–4
102.6	2023.2–1(a) to (d)
102.7	2023.2–1(e)
102.8	2023.2–3
102.9	2023.2–2(a)
102.10(a)	2023.2–4(a)(1)
102.10(b)	2023.2–4(b)
102.11	2023.2–5(a)
102.12	2023.2–6
102.13(a)(1)	2023.2–4(a)(2)
102.13(a)(2)	2023.2–2(b)
102.13(b)	2023.2–5(b)
102.14	2023.3–1
102.15	2023.3–2
102.16	2023.3–3(a)
102.17	2023.3–3(b)
102.18	2023.3–4
102.19	2023.4–1
102.20	2023.4–2
102.21	2023.4–3
102.22	2023.4–3(c)
102.23	2023.4–4(a)
102.24	2023.4–3(b)
102.25	2023.4–4(c)
102.26	2023.4–5
102.27	2023.4–4(b)
102.28	2023.4–3(d)
102.29	2023.4–3(e)
102.30	2023.0–3
102.31	2023.0–5
102.32	2023.0–6(a)
102.33	2023.0–6(b)
102.34	2023.0–7
103.1	2022.0–3

REDESIGNATION TABLE—Continued

Old	New
103.2	2022.1–1
103.3	2022.2–1(a)
103.4	2022.2–1(b)
103.5	2022.3
104.1	1821.6–1
104.2	1821.6–2
104.3	1821.6–3(a)
104.4	1821.6–3(b)
104.5	1821.6–3(c) (1)
104.5 footnote	1821.6–3(c) (2)
104.6	1821.6–3(d)
104.8	1821.6–4
104.9	1821.6–5(a)
104.10	2226.1–6(a)
104.11	1821.6–5(b), 2211.1–5, 2226.1–6(b)
104.12	2226.1–6(c)
104.13	1821.6–6
104.14	1821.6–7
105.1(a)	1825.1
105.1(b)	1825.2
105.1(c)	1825.3
105.2	1826.1
106.1	1824.0–1
106.2	1824.1–1(a)
106.3	1824.1–1(b)
106.4	1824.1–1(c)
106.5	1824.1–2(a)
106.6	(deleted)
106.7	1824.2–1
106.8	1824.2–2
106.9	1824.2–3
106.10	1824.2–4
106.11	1824.2–5
106.12	1824.3
106.13	1824.1–2(b)
106.14	1824.4
106.15	1823.2–4(a)
107.1	2011.0–3
107.2	2011.1–1
107.3	1862.6
108.1(a)	1862.0–3
108.1(b)	1862.1(a)
108.1(c)	1862.1(b)
108.1(d)	1862.2(a)
108.2	1862.2(b)
108.3	1862.2(c)
108.4	1862.1(c)
108.5	1862.3
108.6	1862.5
115.2	5040.0–3
115.3	5041
115.4	5042.1
115.5	5042.2
115.6	5042.3
115.7	5043.1
115.8	5043.2
115.9	5043.3
115.10	5044.1
115.11	5044.2
115.12	5044.3
115.13	5044.4
115.14	5045.1
115.94	2244.9–1(b) (1)
115.95	2244.9–1(d) (1)

REDESIGNATION TABLE—Continued

Old	New
115.96	2244.9–1(a)
115.97	2244.9–1(c)
115.98	2244.9–1(b) (2)
115.99	2244.9–1(e) (1) (i)
115.100	2244.9–1(e) (1) (ii)
115.101	2244.9–1(e) (1) (iii)
115.102	2244.9–1(e) (2) (i), (ii)
115.103	2244.9–1(e) (3)
115.104	2244.9–1(f)
115.105	2244.9–1(g)
115.106	2244.9–1(e) (2) (iv)
115.107	2244.9–1(e) (2) (iii)
115.108	2244.9–1(d) (2)
115.109	2244.9–1(d) (3)
115.110	2244.9–1(i)
115.111	2244.9–1(h)
115.128	4121.0–3
115.129	4121.0–1
115.130	4121.1
115.131	4121.2
115.132	4121.3
115.133	4121.4
115.134	4121.5
115.135	4121.6
115.150	2236.1–1(a)
115.154	2234.2–3(b) (1)
115.155	2234.2–3(b) (2)
115.156	2234.2–3(b) (3)
115.157	2234.2–3(b) (4)
115.158	2234.2–3(b) (6) (i)
115.159	2234.2–3(b) (5)
115.160	2234.2–3(b) (6) (iii), 9239.7–1
115.161	2234.2–3(b) (6) (ii)
115.162	2234.2–3(b) (7)
115.163	2234.2–3(b) (8)
115.164	2234.2–3(b) (9)
115.165	2234.2–3(b) (10)
115.166	2234.2–3(b) (11)
115.167	2234.2–3(b) (12)
115.168	2234.2–3(b) (13)
115.169	2234.2–3(b) (14)
115.170	2234.2–3(b) (15)
115.171	2234.2–3(b) (16)
115.172	2234.2–3(b) (17)
115.173	2234.2–3(b) (18)
115.174	2234.2–3(b) (19)
115.175	2234.2–3(b) (20)
115.176	2234.2–3(b) (21)
115.177	2234.2–3(b) (22)
115.178	2234.2–3(b) (23)
115.179	2234.2–3(b) (24)
115.180	6232.1–1
115.181	6232.1–2
115.182	6232.1–3
115.183	6232.1–4
115.184	6232.1–5
117.1	2254.0–3

REDESIGNATION TABLE—Continued

Old	New
117.2	2254.0–7
117.3	2254.1–1
117.4	2254.1–2
117.5	2254.1–3
117.6	2254.0–6
117.7	2254.1–4
117.8	2254.1–5
117.9	2254.1–6
117.10	2254.2
117.11	2254.3
117.12	2254.4
117.13	2254.5
117.14	2254.6
117.15	2254.7
117.16	2254.8
117.17	2254.9
119.1	2251.0–3
119.2	2251.2(a), (b)
119.3	2251.3
119.4	2251.4
119.5	2251.1–5
119.6	2251.1
119.7	2251.1–1
119.8	2251.1–2
119.9	2251.1–3
119.10	2251.1–4
119.11	2251.2(c)
119.12	2251.5
119.13	1840
130 footnote 1	2221.8
130.1	2221.2–1
130.2	2221.2–2(a)
130.3	2221.2–2(b)
130.4	2221.2–2(c)
130.5	2221.1–1
130.6	2221.1–2
130.7	2221.1–3
130.8	2221.1–4
132.1	2221.3–1
132.2	2221.3–2(a)
132.3	2221.3–3(a)
132.4	2221.3–3(b)
132.5	2221.3–4
132.6	2221.3–3(c)
132.7	2221.3–3(d)
132.8	2221.3–5
132.9	2221.3–2(c)
132.10	2221.3–6
132.11	2221.3–2(b) (1), (2)
132.12	2221.3–2(b) (3)
132.13	2221.3–7
132.14	2221.3–8
133.1	2221.4
137.1	1811.1–1
137.2	1811.1–2
140.1	2214.0–3(a)
140.2	2214.1–1(a)
140.3	2214.1–1(b)
140.4	2214.1–2
140.5	2214.1–3(b)
140.6	2214.1–3(a)
140.7	2214.1–3(c)
140.8	2214.1–4(a), (b)
140.9	2214.1–5(a)

REDESIGNATION TABLE—Continued

Old	New
140.10	2214.1–4(c)
140.11	2214.1–5(b)
140.12	2214.1–6
141.1	2214.0–3(b)
141.2	2214.2–1(a)
141.3	2214.2–1(b)
141.4	2214.2–1(c)
141.5	2214.2–2(a)
141.6	2214.2–2(b)
141.7	2214.2–3
141.8	2214.2–4
141.9	2214.0–3(c)
141.10	2214.3–1
141.11	2214.3–2
141.12	2214.3–3
141.13	2214.3–4
141.14	2214.3–5
141.15	2214.0–3(d)
141.16	2214.4–1
141.17(a)	2214.4–2
141.17(b)	2214.4–3
141.18(a)	2214.4–4
141.18(b)	2214.4–5
141.19	2214.0–3(e)
141.20	2214.5–1
141.21	2214.5–2
141.22	2214.5–3
141.23	2214.5–4
141.24	2214.0–3(f)
141.25	2214.6–1
141.26	2214.6–2
141.27	2214.6–3
141.28	2214.6–4
146.1	2244.1–1
146.2	2244.1–2
146.3(a)	2244.1–3
146.3(b)	2244.1–4(a)
146.4	2244.1–4(b)
146.5	2244.1–5(a)
146.6	2244.1–5(b)
146.7	2244.1–5(c)
146.8	2244.1–6
147.1	2244.2–1(a)
147.2	2244.2–2(a)
147.3	2244.2–6(a)
147.4 (a), (b)	2244.2–3
147.4(c)	2013.2–4
147.5	2244.2–4(a)
147.6	2244.2–4(b)
147.7	2244.2–5(a)
147.8	2244.2–5(b)
147.9	2244.2–5(c)
147.10	2244.2–6(b)
147.11	2244.2–7
147.12	2244.2–2(b)
147.13	2244.2–2(c)
147.14	2244.2–1(b)
147.17	2244.2–8(a)
147.18	2244.2–8(b)
147.19	2244.2–8(c)
147.20	2244.2–8(d)
148.1	2244.3–1
148.2	2244.3–2
148.3	2244.3–3
149.1	2244.4–1(a)
149.2	2244.4–1(b)

REDESIGNATION TABLE—Continued

Old	New
149.3	2244.4–1(c)
149.4	2244.4–1(d)
149.5	2244.4–1(e)
149.6	2244.4–1(f)
149.7	2244.4–1(g)
149.9	2244.4–2(a)
149.10	2244.4–2(b)
149.11	2244.4–3(a)
149.12	2244.4–3(b)
149.13	2244.4–4(a)
149.14	2244.4–4(b)
149.15	2244.4–5(a)
149.16	2244.4–5(b)
149.17	2244.4–5(c)
149.18	2244.4–5(d)
149.19	2244.4–6(a)
149.20	2244.4–6(b)
149.21	2244.4–7(a)
149.22	2244.4–7(b)
149.23	2244.4–8(a)
149.24	2244.4–8(b)
150.1	2244.5–1(a)
150.2	2244.5–1(b)
150.3	2244.5–1(c)
150.4	2244.5–1(d)
150.5	2244.5–1(e)
150.6	2244.5–1(f)
150.6a	2244.5–2(a)
150.6b	2244.5–2(b)
150.6c	2244.5–2(c)
150.6d	2244.5–2(d)
150.6e	2244.5–2(e)
150.6f	2244.5–2(f)
150.6g	2244.5–2(g)
150.6h	2244.5–2(h)
150.6i	2244.5–2(i)
150.6j	2244.5–2(j)
150.6k	2244.5–2(k)
150.6l	2244.5–2(l)
156.6m	1840
150.7	2244.5–3(a)
150.8	2244.5–3(b)
150.9	2244.5–3(c)
150.10	2244.5–3(d)
150.11	2244.5–3(e)
150.12	2244.5–3(f)
150.13	2244.5–4(a)
150.14	2244.5–4(b)
150.15	2244.5–4(c)
150.16	2244.5–4(d)
150.17	2244.5–4(e)
150.18	2244.5–5(a)
150.19	2244.5–5(b)
150.20	2244.5–5(c)
150.21	2244.5–5(d)
150.22	2244.5–5(e)
150.23	2244.5–5(f)
150.24	2244.5–5(g)
150.25	2244.5–5(h)
150.26	2244.5–5(i)
150.27	2244.5–5(j)
150.28	2244.5–5(k)
150.29	2244.5–6(a)
150.30	2244.5–6(b)
150.31	2244.5–6(c)
150.32	2244.5–6(d)

REDESIGNATION TABLE—Continued

Old	New
150.33	2244.5–6(e)
150.34	2244.5–6(f)
150.35	2244.5–6(g)
151.1	2244.6–1
151.2	2244.6–2(a)
151.3	2244.6–2(b)
151.4	2244.6–2(c)
151.5	2244.6–2(d)
151.6	2244.6–3(a)
151.7	2244.6–3(b)
151.8	2244.6–3(c)
151.9	2244.6–4
151.10	2244.6–5
151.11	2244.6–6
152.1	2244.7–1(a)
152.2	2244.7–1(b)
152.3	2244.7–1(c)
152.4	2244.7–1(d)
152.5	2244.7–1(e)
152.6	2244.7–1(f)
152.7	2244.7–1(g)
152.8	2244.7–1(h)
152.9	2244.7–1(i)
152.10	2244.7–1(j)
152.11	2244.7–1(k)
152.12	2244.7–1(l)
152.13	2244.7–2(a)
152.14	2244.7–2(b)
152.15	2244.7–2(c)
152.16	2244.7–2(d)
152.17	2244.7–2(e)
152.20	2244.7–3(a)
152.21	2244.7–3(b)
152.22	2244.7–3(c)
152.23	2244.7–3(d)
152.24	2244.7–3(e)
152.25	2244.7–3(f)
152.26	2244.7–3(g)
152.27	2244.7–3(h)
152.28	2244.7–3(i)
152.29	2244.7–3(j)
152.30	2244.7–3(k)
152.31	2244.7–3(l)
152.32	2244.7–3(m)
152.33	2244.7–3(n)
152.34	2244.7–3(o)
152.35	2244.7–3(p)
160.1	4122.0–3
160.2	4122.0–5
160.3	4122.1–2
160.4	4122.1–1
160.5	4122.2–1, 4122.2–2, 4122.3–1(a)
160.6	4122.2–3
160.7	4122.2–6
160.8	4122.3–2
160.9	4122.2–4
160.10	4122.2–5, 4122.3–1 (a) to (d)
160.11	4122.5–3
160.12	4122.3–5
160.13	4122.5–1, 4122.5–4

REDESIGNATION TABLE—Continued

Old	New
160.14	4122.3–3, 4122.5–5
160.15	4122.3–1(b)
160.16	4122.8–1(c)
160.17	4122.4–1, 4122.4–2, 4122.4–3
160.18	4122.4–4
160.19	4122.6
160.20	4122.5–2
160.21	4122.3–1(e), 4122.3–4
160.22	4122.5–6, 9239.3–1
160.23	4122.7
160.24	4122.8
161.1(a)	4110.0–2
161.1(b)	4110.3–1(c)
161.1(c)	4110.3–2(b)
161.2	4110.0–5
161.3	4111.1
161.4	4111.2
161.5(a)	4111.3–1(a)
161.5(b)	4111.3–1(b)
161.5(c)	4112.2
161.5(d)	4111.3–2(a)
161.5(e)	4111.4–2(f)
161.6(a)	4111.3–1(d)(1)
161.6(b)(1)	4111.3–1(d)(2)
161.6(b)(2)	4115.2–1(g)
161.6(c)	4115.2–1(h)
161.6(d)	4115.2–1(i)
161.6(e)	4115.2–1(e)
161.6(f)	4111.4–2(a) to (e)
161.6(g)(1)	4111.3–2(c)
161.6(g)(2)	4111.4–1
161.6(h)	4111.3–2(d)
161.6(i)	4115.2–1(j)
161.6(j)	4115.2–1(f)
161.7	4115.2–2
161.8	4115.2–1(k)
161.9	4115.2–1 (a), (b), (c), (d)
161.10	4115.2–3, 1853
161.11	4112.3
161.12	4113.1, 9239.3–2
161.13(a)	4114.1–1
161.13(b)	4114.1–2
161.13(c)	4114.1–3
161.13(d)	4114.1–4
161.13(e)	4114.1–5
161.13(f)	4114.2–1
161.13(g)	4114.3–1
161.13(h)	4114.2–2, 3–2
161.14	4114.4
161.15	4115.2–5(a)
161.16	4115.2–4
161.17	4115.2–5(b)
161.18	4115.2–6
161.19	4110.0–3(a)
163.1	4251.1
163.2	4251.2
163.3	4251.3
163.4	4251.4
163.5	4251.5

REDESIGNATION TABLE—Continued

Old	New
163.6	4251.6
163.7	4251.7
163.8	4251.8
163.9	4251.9
165.0	2120.0–3
165.1	2120.0–2
165.2	2121.1
165.3	2121.2–1
165.4	2121.2–2
165.5	2121.2–3
165.6	2121.3
165.7	2121.4–1
165.8	2121.4–2
165.9	2121.4–3
165.10	2121.5
166.1	2211.0–6(a)
166.2	2211.0–7
166.3	2211.0–8(a)
166.4	2211.0–6(b)
166.5	2211.06(c)(1) to (5)
166.6	2211.0–6(d)
166.7	2211.1–2(b)(3)
166.8	2211.1–3(a), (b)
166.9	2211.1–3(c)
166.10	2211.0–8(d)
166.11	2211.0–8(e)
166.12	2211.0–6(c)(6)
166.13	2211.0–6(e)
166.14	2211.0–6(f)
166.15	2211.0–8(b)
166.16	2211.0–8(c)
166.17	2211.1–1
166.18	2211.1–2(a)
166.19	2211.1–2(b)(1)
166.20	2211.1–2(b)(2)
166.21	2211.1–2(c)
166.22	2211.2–2(a)
166.23	2211.2–3(a)
166.24	2211.2–1
166.25 (a), (b), (d) to (h)	2211.2–2(b)
166.25(c)	2211.2–2(f)
166.26	2211.2–2(c)
166.27	2211.2–2(d)(1)
166.28	2211.2–2(d)(2)
166.29	2211.2–2(d)(3)
166.30	2211.2–2(d)(4)
166.31	2211.2–2(d)(5)
166.32	2211.2–2(d)(6)(i)
166.33	2211.2–2(d)(6)(ii)
166.34	2211.2–2(d)(7)
166.35	2211.2–2(d)(8)
166.36	2211.2–2(e)(1)(i)
166.37	2211.2–2(e)(1)(ii)
166.38	2211.2–2(e)(1)(iii)
166.39	2211.2–2(e)(2)
166.40	2211.2–3(b)
166.41	2211.2–3(c)(1)
166.42	2211.2–3(c)(2)
166.43	2211.2–3(c)(3)

REDESIGNATION TABLE—Continued

Old	New
166.44	2211.1–4(a)(1)
166.45	2211.1–4(b), 2211.1–4(c)(1)
166.46	2211.1–4(c)(2)
166.47	2211.1–4(a)(2)
166.48	2211.1–4(e)(1), (2)
166.49	2211.1–4(e)(3)
166.50(a)	2211.1–4(d)(1)
166.50(b)	2211.1–4(d)(2)
166.51	2211.1–4(d)(3)(i)
166.52	2211.1–4(d)(3)(ii)
166.53	2211.1–4(d)(3)(iii)
166.54(a)	2211.1–4(d)(3)(iv)
166.54(b)	2211.1–4(d)(3)(v)
166.55	2211.1–4(d)(4)(i)
166.56	2211.1–4(d)(4)(ii)
166.57	2211.1–4(d)(4)(iii)
166.58	2211.1–4(d)(4)(iv)
166.59	2211.1–4(d)(4)(v)
166.60	2211.1–4(d)(4)(vi)
166.61	2211.1–4(d)(4)(vii)
166.62	2211.3–1(a)
166.63	2211.3–1(b)
166.64	2211.3–2(a)
166.65	2211.3–2(b)
166.66	2211.3–3
166.67	2211.4–1(a)
166.68	2211.4–1(b)
166.69	2211.4–1(c)
166.70	2211.4–2(a)
166.71	2211.4–2(b)
166.72	2211.4–2(c)
166.73	2211.4–2(d)
166.74	2211.5–1(a)
166.75	2211.5–1(b)
166.76	2211.5–1(c)
166.77	2211.5–1(d)
166.78	2211.5–2(a)(1)
166.79	2211.5–2(b)
166.80	2211.5–2(c)
166.81	2211.5–2(a)(2)
166.82	2211.5–2(d)
166.83	2211.5–2(e)
166.84	2211.5–3
166.85	2211.0–6(g)
166.86	2211.0–9(a)
166.87	2211.0–9(c)
167.1	2211.6–1(a)(1) to (3)
167.2	2211.6–1(b)
167.3	2211.6–2(a)
167.3 (footnote)	2211.6–2(b)

REDESIGNATION TABLE—Continued

Old	New
167.4(a)	2211.6–1(a)(4)
167.4(a) (footnote)	2211.6–1(a)(5)
167.4 (b), (c)	2211.6–2 (c), (d)
167.5	2211.6–3(a)(1), (2)
167.6	2211.6–3(a)(3)
167.7	2211.6–3(b)
167.8	(deleted)
167.9	2211.6–3(c), 2013.2–1
167.10	2211.6–4(a)
167.11	2211.6–4(b)(1)
167.12	2211.6–4(b)(2)
167.13	2211.6–4(b)(3)
167.14	2211.6–4(b)(4)
167.15	2211.6–5 (a), (b)
167.16	2211.6–5(c)
167.17	2211.6–5(d)
167.18	2211.6–5(e)
167.19	2211.6–5(f)
167.20	2211.6–5(g)
167.21	2211.6–5(h)
167.22	2211.6–6(a)
167.23	2211.6–6(b)
167.24	2211.6–6(c)
167.25	2211.6–6(d)
167.26	2211.6–6(e)
167.27	2211.6–6(f)
167.28	2211.6–6(g)
167.29	2211.6–7(a)
167.30	2211.6–7(b)
167.31	2211.6–7(c)
167.32	2211.6–8(a)
167.33	2211.6–8(b)
167.34	2211.0–9(b)
167.35	2211.0–9(c)
168.6	3432.1
168.6(a)	2023.6–1(a)(1)
168.6(b)	2023.6–1(c)
168.6(c)	2023.6–1(d)(1)
168.6(d)	2023.6–1(d)(2)
168.6(e)	2023.6–1(b)
168.7	3432.2
168.7(a)	2023.6–1(a)(2)
168.7(b)	2023.6–1(e)
169.1	2211.6–9(a)(1)
169.1 footnote 1	2211.6–9(a)(2)
169.2	2211.6–9(b)(1)
169.3	2211.6–9(e)(1)
169.4	2211.6–9(b)(2)
169.5	2211.6–9(b)(3)
169.6	2211.6–9(c)
169.7	2211.6–9(d)
169.8	2211.6–9(e)(2)
169.9	2211.6–9(e)(3)
169.10	2211.6–9(e)(4)
169.11	2211.6–9(f)
176.1	2212.0–3(a)
176.1 (footnote)	2212.0–3(b)
176.2	2212.0–6(b)
176.3	2212.0–6(a)
176.4	2212.1–1(a)
176.5	2212.1–1(b)
176.6	2212.0–6(c)

REDESIGNATION TABLE—Continued

Old	New
176.7	2212.2–1
176.8 (a), (b)	2212.1–2
176.8 (c), (d)	2212.2–2 (a), (b)
176.9	2212.0–7(a)
176.10	2212.1–3, 2013.2–2
176.11	2212.1–4
176.12	2212.0–6(d)
176.13	2212.0–6(e)
176.14	2212.2–1
176.15	2212.2–3
176.16	2212.4
176.17	2212.2–2
176.18	2212.0–6(f)
176.19	2212.5
176.20	2013.6
181.1	2033.0–3 (a), (b)
181.2	2033.1–1
181.3	2033.1–2
181.4	2033.1–3
181.5	2033.1–4
181.6	2033.1–5
181.7	2033.0–3(c)
181.20	2033.0–3(d)
181.21	2033.0–5
181.22	2033.2–1
181.23	2033.2–2
181.24	2033.2–4(a)
181.25	2033.2–4(b)
181.26	2033.2–3
181.27	2033.2–5
181.28	2033.2–6
181.29	2033.2–7
181.30	2033.2–8
181.31	2033.2–9 (a), (b)
181.32	2033.2–9 (c) to (f)
181.33	2033.0–3(d)(3)
181.34	2033.0–3(e)
185.1	3400.1
185.2	3400.2
185.3	3401.1
185.4	3401.2
185.5	3410.0–6
185.6	3411.1
185.7	3411.2
185.8	3411.3
185.9	3411.4
185.10	3411.5
185.11	3412.1
185.12	3413.1
185.13	3413.2
185.14	3414.1
185.15	3414.2
185.16	3420.1
185.17	3420.3
185.18	3420.4
185.19	3420.5
185.20	3420.6
185.21	3415.1
185.22	3415.2
185.23	3415.3
185.24	3416.1

REDESIGNATION TABLE—Continued

Old	New
185.25	3416.2
185.26	3416.3
185.27	3416.4
185.28	3416.5
185.29	3416.6
185.30	3416.7
185.31	3416.8
185.32	3416.9
185.33	3400.1(a)
185.33a	3632.0–3
185.33b	3632.1
185.33c	3632.2
185.33d	3632.3
185.33e	3632.4
185.33f	3632.5
185.33g	3632.6
185.33h	3633.0–3
185.33i	3633.1
185.33j	3633.2
185.33k	3633.3
185.33l	3633.4
185.33m	3633.5
185.33n	3633.6
185.33o	3633.7
185.34	3634.1
185.35	3400.3
185.36	3400.4
185.37	3635.0–3
185.37a	3631.1
185.37b	3631.2
185.37c	3631.3
185.37d	3631.4
185.37e	3631.5
185.38	3440.1
185.39	3440.2
185.40	3440.3
185.41	3441.1
185.42	3441.2
185.43	3441.3
185.44	3441.4
185.45	3441.5
185.46	3442.1
185.47	3442.2
185.48	3443.1
185.49a	3444.1
185.49b	3444.2
185.50	3445.1
185.51	3446.1
185.52	3446.2
185.53	3450.1
185.54	3450.3
185.55	3450.4
185.56	3453.1
185.57	3453.2
185.58	3453.3
185.59	3453.4
185.60	3453.6
185.61	3451.3
185.62	3455.1
185.63	3456.1
185.64	3457.1
185.65	3460.1
185.66	3460.2
185.67	3460.3
185.68	3460.4
185.69	3470.1

REDESIGNATION TABLE—Continued

Old	New
185.70	3470.2
185.71	3470.3
185.72	3470.4
185.73	3451.1
185.74	3451.2
185.75	3452.1
185.76	3452.2
185.77	3452.3
185.78	3481.1
185.79	3481.2
185.80	3481.3
185.81	3481.4
185.82	3481.5
185.83	3481.6
185.84	3450.2
185.85	3453.5
185.86	3482.1
185.87	3482.2
185.88	3482.3
185.89	3482.4
185.90	3482.5
185.91	3483.1
185.92	3483.2
185.93	3483.3
185.94	3421.0–3
185.95	3421.1
185.96	3421.2
185.97	3421.3
185.98	3421.4
185.99	3421.5
185.100	3458.1
185.120	3510.0–3
185.121	3511.1
185.122	3512.1
185.123	3512.2
185.124	3512.3
185.125	3512.4
185.126	3512.5
185.127	3512.6
185.128	3512.7
185.129	3512.8
185.130	3512.9
185.131	3513.1
185.132	3513.2
185.133	3513.3
185.134	3513.4
185.135	3514.1
185.136	3514.2
185.137	3514.3
185.140	3520.0–1
185.141	3520.0–3
185.142	3521.1
185.143	3521.2
185.144	3522.1
185.145	3522.2
185.146	3523.1
185.147	3523.2
185.148	3523.3
185.149	3523.4
185.150	3523.5
185.151	3523.6
185.160	3430.0–1
185.161	3431.1
185.162	3431.2
185.163	3431.3
185.172	3530.0–1

REDESIGNATION TABLE—Continued

Old	New
185.173	3530.0–3(a)
185.174	3531.1
185.175	3530.0–3(b)
185.176	3532.1
185.177	3532.2
185.178	3533.1
185.179	3533.2
185.180	3534.1
185.181	3535.1
185.182	3535.2
185.183	3536.1
185.184	3537.1
185.185	3537.2
185.186	3538.1
186.1	3540.0–1
186.2	3541.1
186.3	3541.2
186.4	3541.3
186.5	3541.4
186.6	3541.5
186.7	3541.6
186.8	3542.1
186.9	3542.2
186.10	3542.3
186.11	3542.4
186.12	3542.5
186.13	3542.6
186.14	3542.7
186.15	3542.8
186.16	3542.9
186.17	3543.1
186.18	3543.2
186.19	3543.3
186.20	3543.4
186.21	3543.5
186.22	3543.6
186.23	3544.1
186.24	3545.1
186.25	3545.2
186.26	3545.3
187.1	3321.0–3
187.2	3521.1
187.3	3521.2
187.4	3521.3
187.5	3521.4
187.6	3521.5
187.7	3521.6
188.1	3322.0–3
188.2	3322.1–1
188.3	3000.0–5
188.4	3322.1–2
188.5	3322.1–3
188.6	3322.1–4
188.7	3322.1–5
188.8	3322.1–6
188.9	3322.1–7
188.10	3322.2–1
188.11	3322.2–2
188.12	3322.3–1
188.13	3322.3–2
188.14	3322.3–3
188.15	3322.3–4
188.16	3322.4
188.17	3322.5
188.18	3322.6–1
188.19	3322.6–2

REDESIGNATION TABLE—Continued

Old	New
188.20	3322.7–1
188.21	3322.7–2
191.1	3100.0–3
191.2	3100.1
191.3	3101.1
191.4	3101.2
191.5	3103.1
191.6	3103.2
191.7	3100.3
191.8	3101.3
191.9	3100.2
191.10	3104.1
191.11	3102.1
191.12	3102.2
191.13	3106.1
191.14	(deleted)
191.15	3104.2
191.16	3104.3
191.17	3102.5
191.25	3102.3
191.26, 191.27	3102.4
191.40	(deleted)
192.1	3120.1–1
192.2	3105.1
192.3	3120.1–2
192.4	3120.1–3
192.5	3120.2–1
192.6	3120.2–2
192.7	3120.3–1
192.8	3120.3–2
192.9	3120.3–3
192.20	3121.1
192.21	3121.2
192.22	3121.3
192.23	3121.4
192.24	3121.5
192.25	3121.6
192.40	3122.1
192.40a	3122.2
192.41	3122.3
192.42 (a) to (d)	3123.1
192.42 (e), (f)	3123.2
192.42(g)(1)	3123.3(b)
192.42(g)(2)	3123.4
192.42 (h), (i), (j), (k)	3123.5
192.42(l)	3123.6
192.42(m)	3123.7
192.42a	3123.8
192.43	3123.9
192.43a	3100.0–5
192.43b	3123.3(a)
192.50	3124.1
192.51	3124.2
192.52	3124.3
192.53	3124.4
192.54	3124.5
192.60	3122.4–1
192.61	3122.4–2
192.62	3122.4–3
192.63	3122.4–4
192.70	3120.4
192.71	3120.5
192.72	3120.6
192.80	3125.1
192.81	3125.2
192.82	3125.3

REDESIGNATION TABLE—Continued

Old	New
192.83	3125.4
192.100	3126.1
192.101	3126.2
192.120	3127.1
192.120a	3127.2
192.121	3127.3
192.122	3127.4
192.123	3127.5
192.140	3128.1
192.141	3128.2
192.142	3128.3
192.143	3128.4
192.144	3128.5
192.145	3128.6
192.160	3129.1
192.161	3129.2
193.1	3130.0–3
193.2	3131.1
193.3	3131.2
193.4	3131.3
193.5	3131.4
193.6	3130.1
193.7	3132.1–1
193.8	3132.3–2
193.9	3132.3–1
193.10	3132.3–3
193.11	3132.2
193.12	3132.4–1
193.13	3132.4–2
193.14	3132.4–3
193.15	3132.1–2
193.16	3132.5
193.17	3132.6
193.18	3132.7
193.19	3133.1
193.20	3133.2
193.21	3133.3
193.22	3133.4
193.23	3133.5
193.24	3133.6
193.25	3134.1
193.26	3134.2
193.27	3135.0–1
193.28	3135.1
193.29	3135.2
193.30	3135.3
194.1	3140.0–3
194.2	(deleted)
194.3	3141.1
194.4	3141.2
194.5	3140.0–6
194.6	3141.3
194.7	3141.4
194.8	3142.1
194.9	3142.2
194.10	3142.3
194.11	3142.4
194.12	3142.5
194.13	3142.6
194.14	3143.2–1
194.15	3143.2–2
194.16	3143.2–3
194.17	3143.1
194.18	3143.3–1
194.19	3143.3–2
194.20	3143.3–3

REDESIGNATION TABLE—Continued

Old	New
194.21	3143.4
194.22	3143.5
194.23	3143.6
194.24	3144.1
194.25	3145.1
195.1	3150.0–3
195.2	(deleted)
195.3	3151.1
195.4	3151.2
195.5	3150.0–4
195.6	3151.3
195.7	3151.4
195.8	3152.1
195.9	3152.2
195.10	3152.3
195.11	3152.4
195.12	3152.5
195.13	3152.6
195.14	3153.2–1
195.15	3153.2–2
195.16	3153.3–1
195.17	3153.1
195.18	3153.3–2
195.19	3153.3–3
195.20	3153.3–4
195.21	3153.4
195.22	3153.5
195.23	3153.6
195.24	3154.1
195.25	3154.2
195.26	3155.1
196.1	3160.0–3
196.2	3161.1
196.3	3161.2
196.4	3160.0–4
196.5	3161.3–1
196.6	3161.3–2
196.7	3161.3–3
196.8	3161.3–4
196.9	3161.3–5
196.10	3161.3–6
196.11	3161.3–7
196.12	3162.1
196.13	3162.2
196.14	3162.3
196.15	3162.4
196.16	3162.5
196.17	3162.6
196.18	3162.7
196.19	3162.8
196.20	3163.2
196.21	3163.1
196.22	3164.1
196.23	3164.2
196.24	3163.3
196.25	3165.1
196.26	3165.2
196.27(a)	3166.1
196.27(b)	3166.2
197 footnote 1	3170.0–1
197.1	3170.0–3
197.2	3171.1
197.3	3171.2
197.4	3171.3
197.5	3171.4
197.6	3171.5

REDESIGNATION TABLE—Continued

Old	New
197.7	3171.6
197.8	3171.7
198.1	3180.0–3
198.2	(delete)
198.3	3181.1
198.4	3181.2
198.5	3181.3
198.6	3181.4
198.7	3181.5
198.8	3182.1
198.9	3182.2
198.10	3182.3
198.11	3182.4
198.12	3182.5
198.13	3182.6
198.14	3183.1–1
198.15	3183.1–1
198.16	3183.2–1
198.17	3183.2–2
198.18	3183.2–3
198.19	3183.3–1
198.20	3183.3–2
198.21	3183.3–3
198.22	3183.3–4
198.23	3183.4
198.24	3183.5–1
198.25	3183.5–2
198.26	3184.1
198.27	3185.1
199.1	3323.1–1
199.2	3323.1–2
199.3	3323.1–3
199.4	3323.1–4
199.5	3323.1–5
199.6	3323.1–6
199.7	3323.1–7(a)
199.8	3323.1–7(b)
199.9	3323.1–7(c)
199.10	3323.1–8(a)
199.11	3323.1–8(b)
199.12	3323.1–8(c)
199.13	3323.2–1
199.14	3323.2–2
199.15	3323.2–3
199.16	3323.2–4
199.17	3323.2–5
199.18	3323.2–6(a)
199.19	3323.2–6(b)
199.20	3323.2–6(c)
199.21	3323.2–7(a)
199.22	3323.2–7(b)
199.23	3323.2–7(c)
199.24	3323.2–7(d)
199.40	3324.0–3
199.41	3324.1–1
199.42	3324.1–2
199.43	3324.1–3
199.44	3324.2–1
199.45	3324.2–2
199.46	3324.2–3
199.47	3324.3
199.48	3324.4
199.49	3324.5–1
199.50	3324.5–2
199.51	3324.5–3
199.52	3324.5–4

REDESIGNATION TABLE—Continued

Old	New
199.53	3324.5–5
199.54	3324.5–6
199.55	3324.5–7
199.56	3324.5–8
199.61	3325.0–3
199.62	3325.1
199.63	3325.2
199.64	3325.3
199.70	3326.0–3
199.71	3326.1
199.72	3326.2
199.73	3326.3
199.74	3326.4–1
199.75	3326.4–2
199.76	3326.5–1
199.77	3326.5–2
199.78	3326.6
199.79	3326.5–3
199.80	3326.7
199.81	3326.8
200.1	3210.0–3
200.2	3211.1
200.3	3211.2
200.4	3211.3
200.5	3212.1
200.6	3312.2
200.7	3312.3
200.8	3312.4
200.9	3312.5
200.10	3210.0–6
200.31	3220.0–3
200.32	3220.0–6
200.33	3220.0–7
200.34	3221.1
200.35	3221.2
200.36	3221.3
200.37	3221.4
200.38	3222.6–2
200.39	3222.1
200.40	3222.2
200.41	3222.3
200.42	3222.4
200.43	3222.5
200.44	3222.6–1
200.45	3222.7
200.46	3223.1
200.47	3224.1
200.48	3224.2
200.49	3225.1
200.50	3226.1
200.51(a)	3227.1
200.51(b)	3227.2
200.51(c)	3227.3
200.51(d)	3227.4
200.80	3310.0–3
200.81	3311.1
200.82	3311.2
200.83	3311.3
200.84	3312.1
200.85	3313.1
200.86	3312.2
200.87	3313.2
201.1	3380.0–3
201.2	3380.1
201.3	3380.2
201.4	3380.3

REDESIGNATION TABLE—Continued

Old	New
201.5	3380.4
201.10	3381.1
201.11	3381.2
201.12	3381.3
201.13	3381.4
201.14	3381.5
201.20	3382.1
201.20(a)	3382.2
201.21	3382.3
201.22	3382.4
201.23	3382.5
201.24	3382.6
201.25	3382.7
201.40	3383.1
201.41	3383.2
201.42	3383.3
201.43	3383.4
201.50	3384.1
201.51	3384.2
201.60	3385.1
201.61	3385.2
201.63	3385.4
201.80	3386.1
201.81	3386.2
201.90	3383.5
201.110	3387.1
201.111	3387.2
201.112	3387.3–1
201.113	3387.3–2
201.114	3387.3–3
201.115	3387.3–4
201.116	3387.3–5
201.117	3387.4–1
201.118	3387.4–2
201.119	3387.4–3
201.120	3387.4–4
201.121	3387.4–5
201.122	3387.3–6
201.123	3387.5
201.124	3387.6
202.1	2234.5–3(a)
202.2	2234.5–3(b)
202.3	2234.5–3(c)(1)
202.4	2234.5–3(c)(2)
202.5	2234.5–3(c)(3)
202.6	2234.5–3(c)(4)
202.7	2234.5–3(d)
202.8	2234.5–3(e)
202.9	2234.5–3(f)(1)
202.10	2234.5–3(g)
202.11	2234.5–3(f)(2)
202.12	2234.5–3(h)
202.13	1840
203.1	3190.0–3
203.2	3191.1
203.3	3191.2
203.4	3191.3
203.5	3191.4
203.6	3191.5
203.7	3191.6
205.1	1821.7–2
205.2	1862.4
210.1	1821.3–2
210.2	1821.2–1(b)
210.3	1821.3–3
210.4	1821.3–4

REDESIGNATION TABLE—Continued

Old	New
210.5	1823.1–1
210.6	1823.1–2
210.7	1823.2–1
210.8	1823.2–2
210.9	1823.2–3
210.10	1823.3
210.11	1823.2–4(b), 1821.3–5
210.12	1823.5–1(a)
210.13	1823.5–1(b)
210.14	1823.5–2
211.1	1863.5
216.1	1822.1–1
216.2	1822.1–2
217.1	1822.0–3
217.5	1822.2–1
217.7	1822.2–2
217.8	1822.3–1(a)
217.9	1822.3–2
217.11	1822.3–3(a)(1)
217.12	1822.3–3(b)
217.13	1822.3–1(b)(1)
217.14	1822.3–1(b)(2)
217.15	1822.3–3(b)(1)
217.16	1822.3–3(b)(2)
217.17	1822.3–3(b)(3)
217.18	1822.3–3(b)(4)
217.19	1822.3–3(b)(5)
217.20	1822.3–4(a)
217.21	1822.3–4(b)
217.22	1822.3–4(c)
217.23	1822.3–4(d)
217.24	1822.3–5(a)
217.25	1822.3–5(b)
217.26	1822.3–5(c)
217.27	1822.3–5(d)
217.28	1822.3–5(e)
217.29	1822.3–5(f)
217.30	1822.3–6(a)
217.31	1822.3–6(b)
217.32	1822.3–6(c)
217.33	1822.3–6(d)
217.34	1822.3–6(e)
217.35	1822.3–7(b)
217.36	1822.3–7(c)
217.37	1822.3–7(d)
217.38	1822.3–7(e)
217.39	1822.3–7(a)
217.40	1822.3–7(f)
217.41	1822.3–7(g)
217.42	1822.3–8(a)
217.43	1822.3–8(b)
217.44	1822.3–9 (a), (b)
217.45	1822.3–9(c)
217.46	1822.3–9(d)
217.47	1822.4–1 (a), (b)
217.48	1822.4–1(c)
217.49	1822.4–1(d)
217.50	1822.4–1(e)
217.51	1822.4–1(f)
217.52	1822.4–2(a)
217.53	1822.4–2(b)
217.54	1822.4–3
217.55	1822.4–4(a)

REDESIGNATION TABLE—Continued

Old	New
217.56	1822.4–4(b)
217.57	1822.4–5
221.1	1842.2
221.2	1842.4
221.3	1842.5–1
221.4	1842.5–2
221.5	1842.5–3
221.6	1843.5
221.7	1843.5–1
221.8	1843.6
221.9	1843.7
221.10	1843.9
221.11	1851.1
221.12	1851.2
221.13	1851.2–1
221.14	1851.3
221.15	1851.4
221.16	1851.5
221.17	1851.6
221.18	1851.7
221.19	1851.8
221.20	1851.9
221.31	1844.1
221.32	1844.2
221.33	1844.3
221.34	1844.4
221.35	1844.5
221.36	1844.6
221.37	1844.9
221.51	1852.1–1
221.52	1852.1–2
221.53	1852.1–3
221.54	1852.1–4(a)
221.55	1852.1–4(b)
221.56	1852.1–4(c)
221.57	1852.1–4(d)
221.58	1852.1–5
221.59	1852.1–5(a)
221.60	1852.1–5(b)(1)
221.61	1852.1–5(b)(2)
221.62	1852.1–5(b)(3)
221.63	1852.1–5(c)
221.64	1852.1–6
221.65	1852.1–7
221.66	1852.1–8
221.67	1852.2–1
221.68	1852.2–2
221.69	1852.3–1
221.70	1852.3–2
221.71	1852.3–3
221.72	1852.3–4
221.73	1852.3–5
221.74	1852.3–6
221.75	1852.3–7
221.76	1852.3–8
221.77	1852.3–9
221.91	1840.0–5, 1850.0–5
221.92	1840.0–6(a), (b), 1850.0–6 (a), (b)
221.93	1840.0–6(c), 1850.0–6(c)
221.94	1840.0–6(d), 1850.0–6(d)

REDESIGNATION TABLE—Continued

Old	New
221.95	1840.0–6(e), 1850.0–6(e)
221.96	1840.0–6(f), 1850.0–6(f)
221.97	1840.0–6(g), 1850.0–6(g)
221.98	1840.0–7, 1850.0–7
221.99	1840.0–8(a), 1850.0–8(a)
221.100	1840.0–8(b), 1850.0–8(b)
221.101	1840.0–9(a)
221.102	1812.1–1, 1840.0–9(b), 1850.0–9(a)
221.103	1812.1–3, 1840.0–9,(c), 1850.0–9(b)
221.104	1850.0–7(a)
221.105	1850.0–7(b)
221.106	1850.0–7(c)
221.107	1840.0–9(d), 1850.0–9(c)
230.1	2211.7–1(a)(1), 2323.03
230.2	2211.7–1(a)(2)
230.3	2211.7–1(b)(1)
230.4	2211.7–1(b)(2)
230.5	2211.7–1(c)
230.5a	2211.7–2(a)
230.5b	2211.7–2(b)
230.6	2211.7–6(b)
230.7	2211.7–1(d)(1)
230.8	2211.7–1(d)(2)
230.9	2211.7–1(d)(3)
230.10	2323.0–1
230.11	2323.0–5(a)
230.12	2323.1–1
230.13	2323.2
230.14	2323.1–2
230.15	2323.1–3
230.16	2323.3
230.17	2323.4(a)
230.18	2323.4(b)
230.19	2323.1–4
230.20	2323.5
230.21	2211.7–1(e)
230.22	2211.7–1(h)(1), 2244.8–1(a)
230.22 (footnote)	2211.7–1(h)(3), 2244.8–2
230.23	2211.7–1(h)(3), 2244.8–1(b)
230.24	2211.7–1(g)(1)
230.25	2211.7–1(g)(2)
230.26	2211.7–3(a)
230.27	2211.7–3(b)
230.28	2211.7–3(c)
230.29	2211.7–4(a)(1)
230.30	2211.7–4(a)(2)
230.31	2211.7–4(a)(3)
230.32	2211.7–4(a)(4)
230.33	2211.7–4(a)(5)
230.34	2211.7–4(a)(6)
230.38	2211.7–4(b)(1)

REDESIGNATION TABLE—Continued

Old	New
230.39	2211.7–4(b)(2)
230.40	2211.7–4(b)(3)
230.41	2211.7–6(d)(1), 2226.4–8
230.42	2211.7–5(a)
230.43	2211.7–5(b)
230.44	2211.7–6(a)(4)
230.45	2211.7–6(c)
230.46	2211.7–6(d)(2)
230.47	2211.7–6(a)(1) to (3)
230.48	2211.7–6(e)
230.49	2211.7–6(f)(1)
230.49 (footnote)	2211.7–6(f)(2)
230.50	2211.7–6(g)
230.51	2211.7–6(h)
230.52	2211.7–6(i)(1)
230.53	2211.7–6(i)(2)
230.53 (footnote)	2211.7–6(i)(3)
230.54 to 230.62	Chapter I
230.63	2211.7–1(f)
230.64 to 230.100	Chapter I
230.101	2226.4–1(a)
230.102	2226.4–1(b)
230.103	2226.4–1(c)
230.104	2226.4–2(a)
230.105	2226.4–2(b)
230.106	2226.4–3
230.107	2226.4–4
230.108	2226.4–5(a)
230.109	2226.4–5(b)
230.110	2226.4–6
230.111	2226.4–7
230.112	2242.0–8(a)
230.113	2242.0–8(b)
230.114	2242.0–8(c)
230.115 to 230.121	Chapter I
231.1	2253.0–3
231.2	2253.1–1
231.3	2253.1–2
231.4	2253.1–3
231.5	2253.1–4
231.6	2253.1–5
231.7	2253.1–6
231.8	2253.1–7
231.9	2253.1–8
231.10	2253.2–1
231.11	2253.2–2
231.12	2253.3
231.13	2253.4
231.14	2253.5–1
231.15	2253.5–2
231.16	2253.5–3
231.17	2253.6
231.18	2253.7
231.19	2253.8
231.20	2253.9
232.1	2226.0–1
232.2	2226.0–3
232.3	2226.0–7(a)
232.4	2226.0–6(a)
232.5	2226.0–7(b)
232.6	2226.0–6(b)
232.7	2226.0–7(c)
232.8	2226.0–7(d)
232.9	2226.1–1(a)

REDESIGNATION TABLE—Continued

Old	New
232.11	2226.1–1(b)
232.12	2226.1–1(c)
232.13	2226.1–1(d)
232.15	2226.1–2(a)
232.16	2226.1–2(b)
232.17	2226.1–2(c)
232.18	2226.1–3
232.19	2226.1–4(a)
232.20	2226.1–4(b)
232.21	2226.1–4(c)
232.22	2226.1–4(d)
232.23	2226.1–4(f)
232.24	2226.1–4(g)
232.25	2226.1–5(a)
232.26	2226.1–5(b)
232.27	2226.1–5(c)
232.28	2226.1–5(d)
232.29	2226.1–5(e)
232.30	2226.1–5(f)
232.31	2226.1–5(g)
232.32	2226.1–5(h)
232.33	2226.1–5(i)
232.34	2226.1–5(j)
232.35	2226.1–5(k)
232.36	2226.2–1(a)
232.36 (footnote)	2226.2–1(b)
232.37(a)	2226.2–3
232.37(b–c)	2226.2–4
232.37(d)	2226.2–5
232.37(e)	2226.2–6
232.38	2226.2–2
232.39	2226.2–7(a)
232.40	2226.2–7(b)
232.41	2226.2–7(c)
232.42	2226.2–7(d)
232.43	2226.2–7(e)
232.44	2226.2–7(f)
232.45	2226.2–7(g)
232.46	2226.2–7(i)
232.47	2226.2–7(h)
232.48	2226.2–7(j)
232.49	2226.2–7(k)
232.50	2226.2–7(l)
232.51	2226.2–7(m)
232.52	2226.2–7(n)
232.53	2226.2–7(o)
232.54	2226.2–7(p)
232.55	2226.2–7(q)
232.56	2226.2–7(r)
232.57	2226.2–8(a)
232.58	2226.2–8(b)
232.59	2226.3–1
232.60	2226.3–2
232.61	2226.1–7
232.62	2226.1–8
233.1	2211.8–1
233.2	2211.8–2(a)
233.3	2211.8–2(b)
233.4	2211.8–2(c)
233.5	2211.8–7(a)
233.6	2211.8–3(a)
233.7	2211.8–3(b)
233.8	2211.8–4(a)
233.9	2211.8–4(b)
233.10	2211.8–3(c)
233.11	2211.8–3(d)

REDESIGNATION TABLE—Continued

Old	New
233.12	2211.8–3(e)
233.13	2211.8–5(a)
233.14	2211.8–5(b)
233.15	2211.8–5(c)
233.16	2211.8–9
233.17	2211.8–6(a)
233.18	2211.8–6(b)
233.19	2211.8–8(a)
233.20	2211.8–8(b)
233.21	2211.8–7(e)
233.22	2211.8–8(c)
233.23	2211.8–7(d)
233.24	2211.8–7(b)
233.25	2211.8–7(c)
233.26	211.8–8(d)(1)
233.27	211.8–8(d)(2)
234.1	2225.0–3
234.2	2225.0–6
234.3	2225.0–7
234.4	2225.1–1
234.5	2225.1–2
234.6	2225.1–3
234.7	2225.2–1
234.8	2225.3–1
234.9	2225.3–2
234.10	2225.3–3
234.11	2225.2–2
234.12	2225.2–3
234.13	2225.4
240.1	1813.1–1
240.2(a)	1813.1–2
240.2(b)	1813.1–3
240.3	1813.1–4
240.5	1813.2–1
240.6	1813.2–2
240.7	1813.2–3
240.13	1813.3–1
240.14	1813.4–1
243.1	2234.2–2(a)
243.2	2234.2–2(b)
243.3	2234.2–2(c)(1)
243.4	2234.2–2(c)(2)
243.5	2234.2–2(c)(3)
243.6	2234.2–2(d)
243.7	2234.2–2(e)(1)
243.8	2234.2–2(e)(2)
243.9	2234.2–2(e)(3)
243.10	2234.2–2(e)(4)
243.11	2234.2–2(e)(5)
243.12	2234.2–2(e)(6)
243.13	2234.2–2(e)(7)
243.14	2234.2–2(e)(8)
243.15	2234.2–2(e)(9)
243.16	2234.2–2(e)(10)
243.17	2234.2–2(e)(11)
243.18	2234.2–2(e)(12)
243.19	2234.2–2(e)(13)
243.20	2234.2–2(f)
244 (footnote)	2234.1–1(a)(2)
244.1	2234.1–1(b)
244.2	2234.1–2(e)
244.3	2234.1–2(a)
244.4	2234.1–2(b)
244.5	2234.1–2(c)
244.6	2234.1–2(d)
244.7	2234.1–3(a)

REDESIGNATION TABLE—Continued

Old	New
244.8	2234.1–3(b)
244.9	2234.1–3(c)
244.10	2234.1–3(d)
244.11	2234.1–3(e)
244.12	2234.1–3(f)
244.13	2234.1–1(a)(3)
244.14	2234.1–4(a)
244.15	2234.1–4(b)
244.16	2234.1–5(a)
244.17	2234.1–5(b)
244.18	2234.1–5(c)
244.19	2234.1–5(d)
244.20	(Deleted)
244.21	2234.1–6
244.22	2234.3–1(a)(1)(i) to (iv)
244.23	2234.3–1(a)(1)(v), (vi)
244.24	2234.3–1(a)(2)
244.25	2234.3–1(a)(3)
244.26	2234.3–1(a)(4)
244.27	2234.3–1(b)
244.28	2234.3–1(c)
244.29	2234.3–2(a)
244.30	2234.3–2(b)(1)
244.31	2234.3–2(b)(2)
244.32	2234.3–2(c)
244.33	2234.3–2(d)
244.34	2234.3–2(e)(1)
244.35	2234.3–2(e)(2)
244.36	2234.3–2(f)
244.37	2234.3–2(g)
244.39	2234.4–1(a)
244.40	2234.4–1(b)(1)
244.41	2234.4–1(b)(2)
244.42	2234.4–1(b)(3)
244.43	2234.4–1(b)(4)
244.44	2234.4–1(c)(1) to (5)
244.45	2234.4–1(c)(6)
244.46	2234.4–1(c)(7)
244.47	2234.4–1(c)(8)
244.48	2234.6–1
244.49	2234.6–2
244.50	2234.6–3
244.51	2234.6–4
244.52	2234.2–3(a)(1)
244.53	2234.2–3(a)(2)
244.54	2234.2–4(a)
244.55	2234.2–4(b)
244.56	2234.2–4(c)
244.57	2234.2–5(a)
244.58	2234.2–5(b)
244.59	2234.2–5(c)
244.60	2234.5–1(a)
244.61	(deleted)
244.62	2234.5–1(b)
244.64	2234.5–1(c)
244.65	2234.5–1(d)
244.66	2234.5–1(e)
244.67	2234.5–2
244.68	2025.1
244.69	2234.4–2
250.1	2243.0–3
250.2	2243.0–5
250.3	2243.1–1

REDESIGNATION TABLE—Continued

Old	New
250.4	2243.1–2
250.5	2243.2
250.6	2243.0–7(a)
250.7(a)	2243.0–7(b)(1)
250.7(b)	2243.0–6
250.7(c)	2243.0–7(b)(2)
250.8	2243.0–7(c)
250.9	2243.1–3
250.10	2243.1–4
250.11	2243.1–5
250.12	2243.1–6
250.13	1840
251.1	2235.1–1(a)
251.2	2235.1–1(b)
251.3	2235.1–1(c)
251.4	2235.1–1(d)
251.5	2235.1–1(e)
251.6	2235.1–1(f)
251.7	2235.1–1(g)
251.8	2235.1–1(h)
251.9	2235.1–1(i)
251.10	2235.1–1(j)
251.11	2235.1–1(k)
251.12	2235.1–1(l)
251.13	2235.1–1(m)
251.14	2235.1–1(n)(1), 2013.2–3
251.15	2235.1–1(n)(2)
251.16	(Deleted)
251.17	2235.1–2(a)
251.18	2235.1–2(b)
251.19	2235.1–2(c)
251.20	2235.1–2(d)
251.21	2235.1–2(e)
251.22	2235.1–2(f)
252.1	2201.1
252.2	2202.1
253.1	2231.0–3
253.2	2231.1
253.3	2231.2
253.4	2231.3
254.1	2232.0–3
254.2	2232.0–6
254.3	2232.0–7
254.4	2232.0–1
254.5	2232.2–1
254.6	2232.1–4, 2013.3–2
254.7	2232.1–1
254.8	2232.2–3
254.9	2232.2–2
254.10(a–b)	2232.1–3
254.10(c)	2232.2–4
254.11	2232.1–2(a)
254.12	2232.1–2(b)
254.14	2232.2–5
255.1	2242.0–3
255.2	2242.1–1(a)
255.3	2242.1–1(b)
255.4	2242.1–2(a)
255.5	2242.1–2(b)
255.6	2242.1–2(c)
255.7	2242.1–2(d)
255.8	2242.1–2(e)
255.9	2242.2–1
255.10	2242.2–2(a)

REDESIGNATION TABLE—Continued

Old	New
255.11	2242.2–2(b)
255.12	2242.2–3
255.13	2242.2–4(a)
255.14	2242.2–4(b)
255.15	2242.2–5
255.16	2242.2–6(a)
255.17	2242.2–6(b)
255.18	2242.2–7(a)
255.19	2242.2–7(b)
255.20	2242.2–7(c)
255.21	2242.2–8
255.22	2242.2–9
255.26	2242.3–1(a), 2013.4
255.27	2242.3–2
255.28	2242.3–3(a)
255.29	2242.3–3(b)
255.30	2242.3–4(a)
255.31	2242.3–5
255.32	2242.3–6(a)
255.33	2242.3–6(b)
255.34	2242.3–4(b)
255.35	2242.3–7(a)
255.36	2242.3–1(b)
255.37	2242.3–7(b)
255.38	2242.3–7(c)
255.39	2242.3–8
255.40	2242.3–9
255.42	2242.4–1
255.43	2242.4–2
255.44	2242.4–3
255.45	2242.4–4
255.47	2242.4–5
255.48	2242.5–1
255.49	2242.6–1
255.50	2242.6–2
255.51	2242.6–3
255.52	2242.7–1
255.53	2242.8–1
255.54	2242.0–6
256.1	2110.0–3
256.2	2110.0–1
256.3	2111.1
256.4	2111.2
256.5	2111.3
256.6	2111.4
257.1	2233.0–3
257.2	2233.0–2
257.3	2233.2, 2013.3–1
257.4	2233.0–6(a)
257.5	2233.0–6(b)
257.6	2233.1–1
257.7	2233.1–3
257.8	2233.1–4(a)
257.9	2233.1–4(b)
257.10	2233.7
257.11	2233.3–1
257.12	2233.3–2
257.13	2233.3–3
257.14	2233.4
257.15	2233.3–4
257.16	2233.6
257.17	2233.5
257.18	2233.1–2
257.19	2233.3–5

REDESIGNATION TABLE—Continued

Old	New
257.20	1840
258.1	2236.0–3
258.2	2236.0–3(a)
258.3	2236.0–6
258.4	2236.1–1(a)
258.5	2236.1–2
258.6	2236.4–1
258.7	2236.2–1
258.8	2236.3–1
258.9	2236.0–7(a)
258.10	2236.0–7(b)
258.11	2236.4–3
258.12	2236.2–2
258.13	2236.4–2
258.14	2236.5
258.15	2236.3–3
258.16	2236.6–2
258.17	2236.0–5
258.18	2236.0–2(b)
258.19	2236.1–1(b)
258.20(a)	(Deleted)
258.20(b), (c)	2236.3–2
258.21	2236.2–3(a)
258.22	2236.2–3(b)
258.23	2236.6–3
258.24	2236.6–1
259.1(a), (b), (c), (d)	3610.0–3
259.1 (e), (f)	5400.0–3(d)
259.2	5400.0–5
259.20	5461.3–1
259.21	5461.3–2(a)
259.22	5461.3–2(b)
259.23	5461.3–3
259.24	5461.3–2(c)
259.25	5461.3–4
259.26	5461.3–5
259.27	5461.3–6
259.28	5461.3–7
259.29	5461.3–8
259.41	3610.1
259.42	3611.1
259.43	3611.2
259.44	3611.3
259.45	3611.4
259.46	3611.5
259.47	3611.6
259.48	3611.7
259.49	3611.8–1
259.50	3611.8–2
259.51	3611.8–3
259.52	3611.8–4
259.53	3611.8–5
259.54	3611.8–6
259.55	3611.8–7
259.56	3611.9
259.57	3612.1
259.58	3612.3
259.59	3612.2
259.60	3612.4
259.61	3612.5
259.62	3612.6
259.63	3612.7
259.64	3612.8
259.71	3610.2, 9239.0–7
260.1	2215.0–3
260.2	2215.0–5

REDESIGNATION TABLE—Continued

Old	New
260.3	2215.0–2
260.4	2215.1
260.5	2215.2
260.6	2215.3
260.7	2215.4
270.1	2222.1–1
270.2	2222.1–2
270.3	2222.1–3
270.4	2222.1–4
270.5	2222.1–5
270.7	2222.2–1
270.8	2222.2–2
270.9	2222.2–3
270.23	2222.3–1
270.24	2222.3–2
270.25	2222.3–3
270.26	2222.3–5
270.27	2222.3–6
270.28	2222.3–4
270.29	2222.3–7
270.30	2222.4–1
270.31(a)	2222.4–2
270.31 (b) to (d)	2222.4–3(a)
270.32	2222.4–3(b)
270.33	2222.4–4
270.38(a)	2244.7–4(a)
270.38 (b), (c)	2244.7–4(b)
270.39	2244.7–4(c)
270.40	2244.7–4(d)
270.41	2244.7–4(e)
271 (note)	2222.5–1
271.1	2222.5–2
271.2	2222.5–3
272.1	2222.6–1(a) (1)
272.1 footnote	2222.6–1(a) (2)
272.2	2222.6–1(b)
272.3	2222.6–1(c) (1)
272.4	2222.6–1(c) (2)
272.5	2222.6–1(d) (1)
272.6	2222.6–1(e)
272.7	2222.6–1(f)
272.8	2222.6–1(g)
272.9	2222.6–1(h)
272.10	2222.6–1(i)
272.11	2222.6–1(j)
272.12	2222.6–1(k)
272.13	2222.6–1(l)
272.14	2222.6–1(m)
272.15	2222.6–1(n)
272.16	2222.6–1(o)
272.17	2222.6–1(p)
272.18	2222.6–1(q)
272.19	2222.6–2(a)
272.20	2222.6–2(b)
272.21	2222.6–2(c)
272.22	2222.6–2(d)
272.23	2222.6–2(e)
272.24	2222.6–2(f)
272.25	2222.6–2(g)
272.26	2222.6–2(h)
272.27	2222.6–2(i)
272.28	2222.6–3, 2013.2–5
272.29	2222.6–4(a)
272.30	2222.6–4(b)
272.31	2222.6–4(c) (1)

REDESIGNATION TABLE—Continued

Old	New
272.32	2222.6–4(c) (2)
272.33	2222.6–4(d)
272.34	2222.6–4(e) (1)
272.35	2222.6–4(e) (2)
272.36	2222.6–5(a)
272.37	2222.6–5(b)
272.50	2222.6–6(a)
272.51	2222.6–6(b)
273.4	2224.1–1
273.5	2224.1–2
273.31	2224.2–1(a)
273.36	2224.2–1(b)
273.37	2224.2–1(c), 2013.5
273.38	2224.2–1(d)
273.39	2224.2–1(e) (1)
273.40	2224.2–1(e) (2)
273.45	2224.2–2(a)
273.46	2224.2–2(b)
273.50	2224.2–3(a)
273.51	2224.2–3(b)
273.52	2224.2–4(a)
273.53	2224.2–4(b)
273.68	2224.3–1
273.69	2224.3–2
273.70	2224.3–3
273.71	2224.3–4
273.72	2224.3–5
273.73	2224.3–6
280.1	9180.0–3(a)
280.2	9185.1–1(a)
280.3	9185.1–3
280.4	9185.1–3(a)
280.5	9185.1–1(b)
280.6	9185.2–2(a), (b)
280.7	9185.2–2(c)
280.8	9185.2–2(d)
280.9	9185.2–2(e)
280.10	9185.2–2(f)
281.1	9180.0–3(c) (1)
281.2	9180.0–2(b)
281.3	9185.1–2(a) (1)
281.4	9185.3–1(a)
281.5	9185.3–2(a)
281.6	9185.3–3
281.7	9185.3–2(b)
281.8	9185.3–1(b)
281.9	9185.3–1(c)
281.10	9180.0–3(c) (2)
281.11	9185.1–2(a) (2)
281.12	9185.4–2(b)
281.13	9185.4–2(a)
281.14	9185.4–3
281.15	9185.4–1(a)
281.16	9185.4–1
284.23	5400.0–3(c) (1)
284.24	5461.1–1(a)
284.25	5461.1–1(b)
284.26	5461.1–1(c)
284.27	5461.1–1(d)
284.28	5461.1–1(e)
284.29	5461.1–1(f) (2)
284.30	5461.1–1(f) (1)
284.31	5461.1–1(g) (1)
284.32	5461.1–1(g) (2)

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Old	New
284.33	5461.1–1(f) (3)
284.36	5461.1–2(a)
284.37	5461.1–2(b)
284.38	5461.1–2(c)
284.39	5461.1–2(d)
284.41	5461.1–3
284.42	5400.0–3(c) (2)
284.43	5461.1–4(a) (1)
284.44	5461.1–4(a) (2)
284.45	5461.1–4(a) (3)
284.46	5461.1–4(a) (4)
284.47	5461.1–4(b)
284.48	5461.1–4(b)
284.49	5461.1–4(c)
284.50	5461.1–4(d)
284.51	5461.1–4(e)
284.52	5461.1–4(f), 9289.1–1
285.1	5400.0–3(a)
285.2	5400.0–5
285.3	5401.1
285.4	5432.1
285.5	5402.1
285.6	5411.1
285.7	5421.1
285.8	5433.1
285.9	5433.2
285.10 (a) to (d)	5433.3
285.10(e)	5435.1
285.11	5433.4
285.12	5436.1
285.13	5437.1
285.14	5441.2
285.15	5441.3
285.16	5443.1
285.17	5443.2
285.18	5445.1
288.1	9239.0–8
288.2	9239.1–3
288.3	9239.6–1
288.4	9239.5–1
288.5	9239.5–2
288.6	9239.5–3
288.7	9239.5–3
288.8	9239.5–3
288.10	9239.5–3
288.11	9239.5–3
288.12	9239.0–9
289.1	9239.2–1
289.2	9239.2–2
289.3	9239.2–3
289.4	9239.2–4
289.5	9239.2–5
292.1	2321.1–1(a)
292.2	2321.1–1(b)
292.3	2321.1–1(d)
292.4	2321.1–1(e)
292.5	2321.1–1(c)

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292.7	2321.1–2(b)
292.8	2321.1–2(c)
292.9	2321.1–2(d)
292.10	2321.1–3(a)
292.11	2321.1–3(b)
292.12	2321.1–3(c)
292.13	2321.1–3(d)
292.14	2321.1–3(e)
292.15	2321.1–3(f)
292.16	2321.1–3(g)
292.17	2321.1–4(a)
292.18	2321.1–4(b)
292.19	2321.1–4(c)
292.20	2321.1–4(d)
292.21	2321.1–4(e)
292.22	2321.1–4(f)
292.23	1840
295 (footnote 1)	2311.0–3(d)
295.1	2311.0–3 (a), (b)
295.2	2311.0–3(c)
295.3	2211.2–4
295.5	2311.3
295.6	2321.3–1
295.7	2321.3–2, 2013.2–6
295.8	1821.2–3
295.9(a)	2311.0–1
295.9(b)	2311.0–6
295.9(c)	2311.0–5
295.10	2311.1–1
295.11	2311.1–2, 2013.2–7
295.12	2311.1–3
295.13	2311.1–4
295.14	2315.1
295.15	2311.2
295.16	2331.1
295.17	2312.0–3
295.18(a)	2312.0–1
295.18 (b) to (d)	2312.1–1 (a) to (c)
295.19	2312.1–2
295.20	2312.1–3
296.1	2410.0–3
296.2(a)	2410.0–2
296.2 (b), (c), (d)	2410.0–6
296.3	2410.0–4
296.4(a)	2411.1–1
296.4(b)	2411.1–2
296.4 (c), (d)	2411.1–3
296.4(e)	2411.1–4
296.4(f)	2411.1–5
296.5	2411.2
296.6	2411.3
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AUTHORITY: The provisions of this Part 1810 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 1810—General Rules

§ 1810.1 Rules of construction; words and phrases.

Except where the context of the regulation or of the Act of the Congress on which it is based, indicates otherwise, when used in the regulations of this chapter:

(a) Words importing the singular include and apply to the plural also;

(b) Words importing the plural include the singular;

(c) Words importing the masculine gender include the feminine as well;

(d) Words used in the present tense include the future as well as the present;

(e) The words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(f) "Officer" and "authorized officer" include any person authorized by law or by lawful delegation of authority to perform the duties described;

(g) "Signature" or "subscription" includes a mark when the person making the same intended it as such;

(h) "Oath" includes "affirmation", and "sworn" includes "affirmed";

(i) "Writing" includes printing and typewriting as well as holographs, and "copies" include all types of reproductions on paper, including photographs, multigraphs, mimeographs and manifolds.

(j) The word "company" or "association", when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association", in like manner as if these last-named words, or words of similar import, were expressed.

§ 1810.2 Communications by mail; when mailing requirements are met.

(a) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(b) Where the authorized officer uses the mails to send a notice or other communication not provided for by Subchapter P of this title to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

Subpart 1811—Qualifications of Applicants

§ 1811.1 Evidence of citizenship status.

§ 1811.1–1 General.

(a) This part does not deal with establishing citizenship by birth.

(b) In cases where proof of citizenship status is required, the manager may accept a statement of the applicant giving the facts as to such status, which statement should include the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and, when available, the number of the document in question, if the proceeding has been had since September 27, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which he was a citizen or subject. The citizenship showing may be incorporated in any of the forms prescribed for use in connection with the entry of public lands. Where the necessary data have been given, the manager will accept same and proceed with the case.

(c) The manager may accept the following evidence of a party's citizenship status, where proof of such status is required:

(1) A declaration of intention to become a citizen of the United States executed not more than seven years prior to the date of the filing of the public land application (a declaration more than seven years old is invalid); or

(2) An acknowledgment from the clerk of court (Immigration and Naturalization Service Form N–414) of the filing of a petition for naturalization; or

(3) An original certificate of naturalization or duplicate issued by the Immigration and Naturalization Service in lieu of one lost, mutilated or destroyed.

(d) Any document listed in this paragraph will be returned by the Bureau of Land Management to the party entitled thereto, as soon as it has served the purpose for which it is submitted.

§ 1811.1–2 Statement required of married women and widows.

(a) A married woman, or widow, who is required to furnish evidence of citizenship in this country in connection with an application or entry under the public land laws must furnish a statement showing the facts upon which she bases her claim to such citizenship. (See 8 U.S.C. 1435 (a), (c), and 1482.)

(1) A married woman must show the date of her marriage if both she and her husband are not native born.

(2) A widow must show the date of her marriage and the date of the death of the husband.

(3) If a married woman or widow claims citizenship through her husband, she must show the facts as to his citizenship and that they were married prior to September 22, 1922. If he acquired such citizenship by naturalization, satisfactory evidence of the naturalization must be furnished in the manner provided by § 1811.1–1.

(4) If applicant was married prior to March 3, 1931, she must show the facts as to her husband's citizenship. An applicant who married on or after March 3, 1931, need not make any showing as to the citizenship of her husband.

(b) An applicant who claims citizenship through her own naturalization separate and apart from the naturalization of the husband or who bases her right to file a particular application on the filing by herself of a declaration of intention to become a citizen must in the manner provided by § 1811.1–1, furnish satisfactory evidence of her naturalization or of the filing of the declaration.

(c) An applicant who fails to make the showing required, as stated, should be allowed 30 days from receipt of notice within which to do so, or to appeal.

Subpart 1812—Qualifications of Practitioners

§ 1812.1 General.

§ 1812.1–1 Regulations governing practice before the Department.

Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

§ 1812.1–2 Inquiries.

No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit

authorized by the unit head to answer inquiries.

Subpart 1813—Public Land Records

§ 1813.1 Tract books and plats.

§ 1813.1–1 Notations to records.

(a) Section 2295 of the Revised Statutes (43 U.S.C. 163), provides in part that:

> The manager of the land office shall note all applications under the provisions of this chapter (5—Homesteads) on the tract books and plats of his office, and keep a register of such entries.

(b) While this section applies to homestead applications only, it is nevertheless necessary that notations shall be made on the tract books and plats of all applications and entries of public lands, regardless of their character, in order that the status of a tract may be readily ascertained by the officer or person examining either tract book or plat, and the manager shall cause the proper notations to be made on the plats as well at the tract books.

(c) All withdrawals, reservations, classifications, designations under the Enlarged Homestead Act, and similar orders affecting the disposition of the land should be noted on the margin of the plats as well as on the tract books.

§ 1813.1–2 Availability of copies.

When it is necessary for the manager due to the pressure of current business relating to the entry of land, to refuse to fill an order for a plat or diagram, the fee received should be returned to applicant and he advised of the reason therefor. There is no objection to the manager furnishing to the party a list of the names of persons or companies located in his city who follow the business of preparing such diagrams, but the list should be complete and be arranged in alphabetical order. Under no circumstances should he recommend any person or company.

§ 1813.1–3 Lists of abstracters and attorneys.

If asked for a list of abstracters doing business in his city, or for a list of attorneys resident in such city who practice before his office, the manager in complying with the request, should make the list complete, and arranged in alphabetical order.

§ 1813.1–4 Filing of township plats.

(a) After acceptance of a survey, the original plat thereof will be returned to the State Director, the duplicate plat will be retained in the files of the Bureau of Land Management in Washington, D.C., and the triplicate plat will be forwarded to the appropriate land office. The plat will be placed on record in the open files of the respective offices immediately upon receipt thereof and will then be available to the public as a matter of information only with respect to the technical data and descriptions appearing thereon; copies of such plat and the related field notes will be furnished upon request and payment of the costs as provided in § 2.4 of this title. When the manager of the land office is instructed to file the plat without the usual public notice, such plat will be regarded as officially filed in his office on the date of receipt.

(b) If public notice of the filing of the plat is to be given, the authorized officer shall prepare the notice for publication in the FEDERAL REGISTER.

§ 1813.2 Copies of records and papers.

§ 1813.2–1 Homestead entry papers.

(a) No photographic certified copy of homestead entry papers, where the entry was made prior to June 22, 1874, and was for less than 160 acres, will be made, except for Government use. All certified copies of such entry papers, for other than Government use, must be typewritten. Where a blank form is used the blank spaces must be typewritten.

(b) No tracing of any signature, or imitation thereof, to papers in such homestead entries shall be made by any attorney, agent, or other person, for private use.

§ 1813.2–2 Fees for copies made by managers.

(a) The performance of any service by managers or by the employees of their offices for which personal remuneration or compensation is received is prohibited, except as to cases where an officer or employee receives fees or compensation expressly allowed by law. Nor shall such service be performed save in the course of official duties and during office hours, and persons not officially connected with any office, even though Government employees, shall not be admitted to that office outside of office hours, unless the public interests are involved in the purpose for which such admission is desired or requested, in which event the manager is authorized to extend the working hours for such purpose.

(b) When certified copies of records are requested and the pressure of public business will not permit of the work being done by the office force, the parties desiring same, if desk room is available, may be permitted to make such copies, but before certification by the manager, copies thus made must be carefully compared by his office force and he will charge therefor the fees allowed by law.

§ 1813.2–3 Fees for certification of copies made by private party.

The same fees must be collected for comparing the copies made by the parties desiring them, and certifying to their correctness, under § 1813.2–2 as are collected for copies prepared by the land office force and certified by the manager.

§ 1813.3 Serial register.

§ 1813.3–1 Inspection of serial register.

The serial register is a public record and may be reasonably inspected by any person, provided such examination may be made without interfering with the orderly dispatch of public business. Should the manager ascertain that any person is obtaining information therefrom for improper purposes, he will deny such person further access thereto.

§ 1813.4 Production of records in court.

§ 1813.4–1 Statutory authority.

Whenever, pursuant to the act of April 19, 1904 (33 Stat. 186; 43 U.S.C. 13), the manager shall be served with a subpena duces tecum or other valid legal process requiring him to produce, in any United States court or in any court of record of any State, the original application for entry of public lands or the final proof of residence and cultivation or any other original papers on file in the Bureau of Land Management on which a patent to land has been issued or which furnish the basis for such patent, it shall be the duty of such manager to at once notify the Director of the Bureau of Land Management of the service of such process, specifying the particular papers he is required to produce, and upon receipt of such notice from any manager the Director of the Bureau of Land Management shall at once transmit to such manager the original papers specified in such notice, and attach to such papers a certificate, under seal of his office, properly authenticating them as the original papers upon which patent was issued. The said act also provides that such papers so authenticated shall be received in evidence in all courts of the United States and in the several State courts of the States of the Union. (33 Stat. 186; 43 U.S.C. 13)

CROSS REFERENCE: For testimony of employees and use of books, records and files in judicial and administrative proceedings, see §§ 2.6 and 2.20 of this title.

PART 1820—APPLICATION PROCEDURES

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1824.9–1 Statutory requirements.
1824.9–2 Description of special surveys.
1824.9–3 Proof.

Subpart 1825—Relinquishments

Sec.
1825.1 When relinquished land becomes subject to further appropriation.
1825.2 Relinquishment of right-of-way.
1825.3 Repayment cases.

Subpart 1826—Reinstatement of Canceled Entries

1826.1 Application for reinstatement.

Subpart 1821—Execution and Filing of Forms

AUTHORITY: The provision of this Subpart 1821 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1821.1 Names of claimants.

Full names of claimants should appear in applications, final certificates, and patents.

§ 1821.2 Office hours; time and place for filing.

§ 1821.2–1 Office hours of land offices.

(a) Land offices and the Washington office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of national holidays, the Monday following each national holiday which falls on a Sunday, and days upon which the office may be closed by Presidential or other administrative order. The hours during which the land offices and the Washington office are open to the public for the filing of documents and inspection of records are from 10:00 a.m. to 3:00 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

(b) Applications to make entry cannot be received by the manager out of office hours, nor elsewhere than at his office, nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

(1) Copies of forms may be obtained from the land offices, State Director's offices or the Bureau of Land Management, Washington, D.C., 20240, and must be completed and filed in proper land office, or for land in States for which there are no land offices, with the Bureau of Land Management, Washington, D.C., 20240, except that applications for lands in North or South Dakota, must be filed in the land office at Billings, Montana; for lands in Nebraska or Kansas in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 1821.2–2 Time limit for filing applications in Land Office.

(a) The manager will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the usual right of appeal; also subject to the right to file a new and properly executed application, or to reexecute the rejected application, prior to the intervention of any valid adverse claim.

(c) The manager will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the land office or the Washington office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the land office or the Washington office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

§ 1821.2–3 Simultaneous applications.

All applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening in involved, the applications will be treated as having been filed simultaneously if they are received by a land office (or, if there is no such office for the State, by the Washington Office of the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation, applications which

are filed simultaneously will be processed in accordance with the following rules:

(a) All such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.

(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.

(1) Notwithstanding the provisions of paragraph (a) of this section, the priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3123.9 of this chapter will be determined by public drawing whether or not they are in conflict.

(c) All applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations.

§ 1821.2–4 Use of certified mail.

Certified mail as outlined in 39 CFR Part 58, may be used in lieu of registered mail in public land matters within the jurisdiction of the Department of the Interior except where use of registered mail is specifically required by statute.

§ 1821.3 Oaths.

§ 1821.3–1 Elimination of the requirements of oaths on written statements in public land matters.

(a) By section 1 of the act of June 3, 1948 (62 Stat. 301; 43 U.S.C. 1211), written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require. Accordingly, all written statements in public land matters within the jurisdiction of the Department of the Interior required prior to June 3, 1948, by law, or Chapter I of this title, to be made under oath, need no longer be made under oath, except as provided in this paragraph.

(1) Affidavits must be furnished where required by Parts 1840 and 1850.

(2) Final proofs required by R.S. 2294 (43 U.S.C. 254) as amended and supplemented, and the regulations thereunder, to be taken in affidavit form before designated officers shall be taken in that form before such officers. (See §§ 1821.3–6, 2211.1–4 (b), (c) (1), 1821.3–2, and 2226.–1–5(d) of this chapter.

(3) Statements as to the financial worth of individual sureties on bonds furnished in connection with leases, licenses or permits granted under the public land laws, known as "Affidavits of Justification," must be made in affidavit form.

(b) Where prior to June 3, 1948, the law required an application or other paper to be sworn to in a particular land district, and this section makes it unnecessary for the paper to be executed in affidavit form, the applicant still must sign the paper in the particular land district and state in the paper that it was so signed.

(c) Unsworn statements in public land matters are subject to Title 18, U.S.C., section 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction.

(d) False statements as to any material fact made by an applicant in connection with applications, allowance of which is discretionary with the authorized officer, are a proper basis for rejection of the applications.

§ 1821.3–2 Officers qualified.

(a) Oaths required under the homestead, preemption, timber-culture, desert-land, and timber and stone acts may, in States for which there is a land office, be made before the manager or the acting manager of the land office for the district embracing the land sought; or before any of the following officers inside the county, parish, or land district embracing the land sought, namely, a United States commissioner, a notary public, a judge, a clerk, or a prothonotary of a court of record, a deputy of such clerk or prothonotary, or a magistrate authorized by the laws of or pertaining to the State to administer oaths; or before any such officer outside the county and the land district embracing the land sought who because of geographic or topographic conditions may be the qualified officer nearest to the land or most accessible from it. In States for which there is no land office, the required oaths may be made before any qualified officer in the State.

(b) The official character of any officer not using a seal of office, other than a manager or an acting manager, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. If, in States for which there is a land office, an oath be administered outside the county and the land district embracing the land sought, the applicant must show by a statement, satisfactory to the Bureau of Land Management, that the oath was made before an officer who because of geographic or topographic conditions was the qualified officer nearest to the land sought or most accessible from it. Such showing, however, will not be required as part of the final proof if the proof be taken in the town or city in which the newspaper printing the final proof notice is published.

(c) The papers in cases arising under the statutes above specified must be filed in the land office for the district embracing the land sought, if there be any such office; otherwise in the Bureau of Land Management in Washington, D.C. An application is not acceptable if dated more than 10 days before being deposited in the mails for filing in the appropriate office.

§ 1821.3–3 Identity of applicant to be established prior to administering oath.

No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

§ 1821.3–4 Attachment of jurat.

No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant.

§ 1821.3–5 Fees for administering oath, preparation of paper and writing out testimony; penalty.

No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of $1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the Revised Statutes (43 U.S.C. 254).

§ 1821.3–6 Officers qualified to administer oaths in Alaska.

(a) Oaths in public land cases in Alaska may be executed before the manager or the acting manager of the land office for the district in which the lands sought are situated, or before any court, judge, or other officer in the State, or elsewhere in the United States, authorized by law to administer an oath, or before any postmaster in Alaska. (30 Stat. 409, 413, 53 Stat. 1219; 48 U.S.C. 359, 35a–35c)

(b) Except as otherwise provided by an act of Congress, the postmaster is authorized to charge and receive for his services the fees prescribed by law for a notary public for similar services in the State.

(c) The official character of any officer not using a seal of office, other than a manager, an acting manager, or a postmaster, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. Each certificate of oath, affirmation, or acknowledgment executed by a postmaster within the State as provided in this section must be signed by him, with a designation of his title, must have affixed thereto the cancellation stamp of the post office, and must state the name of the post office and the date on which the oath or affirmation is administered or the acknowledgment is taken.

§ 1821.4 Notations on applications.

§ 1821.4–1 Notation of rights-of-way.

(a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, a reference to such right-of-way should be made upon the original entry papers and upon the notice of allowance of the application issued to the entryman.

(b) He will make no such notation upon the final entry papers unless the right-of-way has been granted under an act of Congress which does not in terms protect the grantee against subsequent adverse rights, in which case he will place the same notation as to right-of-way upon the final entry papers, so that the reservation of the right-of-way will be made in the patent, when issued (23 L.D. 67).

§ 1821.4–2 When notation required.

The manager will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty (208 U.S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof by the manager, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

§ 1821.4–3 When notation not required.

(a) The Secretary of the Interior having held, in the case of Dunlap v. Shingle Springs and Placerville R. R. (23 L. D. 67) that "A" railroad right-of-way under the act of March 3, 1875, 18 Stat. 482; 43 U.S.C. 934–939, is fully protected by the terms of the act as against subsequent adverse rights, and a reservation of such right-of-way, in final certificates and patents issued for lands traversed thereby, is therefore not necessary and should not be inserted" (syllabus), and having on October 16, 1896 denied a motion for review of said decision, the managers will be governed thereby.

(b) The language of the canal and reservoir right-of-way act of March 3, 1891 (26 Stat. 1101, 1102; 43 U.S.C. 946–949), in reference to this matter, being the same as of the act of 1875, the ruling applies to it as well.

§ 1821.5 Entries for lands in more than one land district.

§ 1821.5–1 Governing regulations.

Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 1821.5, 1861.2; 1823.4 (a) and (b).

§ 1821.5–2 Applications and fees to be filed in each office.

Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application should contain a proper reference to the other application.

§ 1821.5–3 Mining claims.

In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of feees, and the purchase price of the land will be further governed by the provisions of §§ 1861.2 and 1823.4(a).

CROSS REFERENCE: For mining claims, see Subpart 3631 of this chapter.

§ 1821.5–4 Public offerings.

Applications for public offerings under section 2455, Revised Statutes, as amended (43 U.S.C. 1171), cannot be considered unless all the land lies in one land district.

CROSS REFERENCE: For public offerings, see Subpart 2243 of this chapter.

§ 1821.6 Amendments.

§ 1821.6–1 Authority.

Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat. 645; 43 U.S.C. 697), authorizes the amendment of entries and patents for the purpose of correcting errors pertaining to the description of the lands entered and intended to be entered.

§ 1821.6–2 Application to amend; form; where filed.

(a) Application for amendment must be filed in accordance with the provisions of § 1821.2. The application should be substantially in accordance with the for substantially in accordance with the form approved by the director. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be signed by the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

(b) All applications must be accompanied by an application service fee of $10 which will not be returnable.

§ 1821.6–3 Showings required.

(a) *Nature and source of error; good faith.* The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has beeen undue delay in applying for amendment, the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained.

(b) *Removal of timber.* The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by an adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

(c) *Ownership; deed of reconveyance.* (1) Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the statement of the applicant, corroborated as provided for in paragraph (d) of this section will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other encumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be cellar and free of encumbrance.

(2) Where application for issuance of amended patent is made by the transferee of the original patentee, the new patent may be issued in the name of the transferee. (Instr. Nov. 13, 1925, 51 L.D. 281.) Similarly, patent may be issued to the transferee of the entryman of an

unpatented entry which has been amended before issuance of patent. (Instr. Jan. 22, 1926, 51 L.D. 335.)

(d) *Corroboration.* The statement of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must vertify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

§ 1821.6–4 Publication of notice; statements of witnesses.

Where amendments are allowed of claims upon which final proof has bee submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must submit statements, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

§ 1821.6–5 Amendments in exercise of equitable powers.

(a) The statute to which §§ 1821.6–1 to 1821.6–3(d) refer, does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the Department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert-land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

(b) Applications for amendment presented pursuant to paragraph (a) of this section will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert-land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6–1 to 1821.6–5(a), and 2226.1–6 (a) of this chapter and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCES: For homesteads, generally, see Subpart 2211 of this chapter. For desert-land entries, see Subpart 2226 of this chapter.

§ 1821.6–6 Entry improperly allowed not to be amended.

Where entries, selections, or locations are improperly allowed, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed, because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

§ 1821.6–7 When amendment becomes effective.

Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

§ 1821.7 Unsurveyed lands; lands within national forests, reservoir sites.

§ 1821.7–1 Applications and selections for, and filings and locations upon, unsurveyed land.

To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, managers will reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to paragraphs (a) to (e) of this section.

(a) It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, a statement must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 30 days. In default of action by the party notified the manager will promptly adjust the claim and report his action to the Bureau of Land Management.

(d) Notice of the application, selection, filing, or location, describing the land as directed in paragraph (a) of this section, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application, selection, filing, or location, as the case may be.

(e) Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of paragraph (a) of this section.

§ 1821.7–2 Application alleging settlement prior to establishment of forest.

When a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, it must be accompanied by a statement in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated. Such statement, must be corroborated by at least one disinterested person.

§ 1821.7–3 Application in conflict with reservoir sites.

(a) The grant for reservoir sites made by sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43

U.S.C. 946–949), is an easement only, and not a fee. The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits in lands covered by such a grant under certain conditions, to the right-of-way grantee, or his or its successor in interest, as provided in Part 3310 of this chapter.

(b) An application other than for oil and gas which includes one or more legal subdivisions entirely within the grant of an easement for a reservoir site will be rejected as to such subdivisions. If the application covers legal subdivisions partially within such a grant, it may be allowed as to such subdivisions, in the absence of other objection, subject to the easement.

§ 1821.9 Alaska.

§ 1821.9–1 Applications not to be rejected because executed more than 10 days prior to filing.

Section 1821.2–2 directs managers to reject all applications to make entry which are executed more than 10 days prior to filing. Until such time as the transportation facilities in Alaska are improved the provisions of said section will not be held applicable to applications filed in the district land offices of Alaska.

§ 1821.9–2 Joint action to acquire public lands.

(a) Ten or more persons may file in the proper district land office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U.S.C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U.S.C. 682a), Home-Site Law (48 Stat. 809; 48 U.S.C. 461) and Town-Site Laws (R.S. 2380–2389, as amended, 43 U.S.C. 711–722; 26 Stat. 1099; 48 U.S.C. 355). Each application must be complete in itself except that information common to more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) All claims to specified tracts of land must be initiated in the manner required by law. Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such requirements, signed by each prospective applicant, must be submitted in lieu of an application. Upon compliance with applicable requirements as to residence or otherwise, each such person must file an actual application as required by law.

(c) Each group of applications filed hereunder should be accompanied by two copies of a diagram showing the plan of development contemplated by the applicants. Each such application may describe the land covered by it in terms of a lot or tract as set forth in such diagram or the preliminary diagram specified in this paragraph. The diagram should include specific information as to the relative location and areal extent of each tract or site which it is contemplated will be devoted to school and other municipal or common purposes, to stores or other commercial enterprises, to housing and to agriculture and grazing. Assistance in the preparation of a preliminary diagram, which need not pertain to a particular tract of land, may be obtained by communicating in person or by mail with the United States Department of the Interior, Washington, D.C., 20240. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

(d) Upon the filing of such a diagram by the applicants or their authorized representative, a petition or petitions may be filed requesting the withdrawal of the lands to be devoted to school and other municipal or common purposes.

(e) If any of the applications involve unsurveyed public lands, such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

(f) Persons who propose to file applications in a group under paragraph (a) of this section, by a writing to be filed in the land office, may designate a representative or representatives who may, at their direction and in their behalf, make the actual filing of the applications, previously executed by the applicants and accompanying and supporting documents; pay any or all fees and costs in connection therewith; and, in complete satisfaction of the requirements of § 2211.0–6(a) of this chapter, personally examine the lands sought to be entered and make and file a statement setting forth the information otherwise required of each individual applicant by § 2211.0–6(a) of this chapter.

(g) Where ten or more settlers aer entitled by statute to request and receive a free survey of the lands upon which they have settled, they may file a joint petition stating the facts as to compliance with law by each of them. Such petition must be corroborated by two witnesses having knowledge of the facts.

(h) Where the costs of any survey made under this section are required by statute to be borne by one who seeks the survey, the necessary deposit for costs must be made in accordance. The individual applicant is ultimately responsible in such instances for the costs entailed in satisfying his request for such a survey, but persons who file joint or group petitions for such surveys may share the costs thereof in any proportion they may determine.

Subpart 1822—Payments, Repayments, and Bonds

AUTHORITY: The provisions of this Subpart 1822 issued under sec. 4, 21 Stat. 287, as amended; 43 U.S.C. 268, except as noted following sections affected.

§ 1822.0–3 Authority for repayments.

The repayment of moneys received by the Government and covered into the United States Treasury, in connection with the disposal or attempted disposal of the public lands, is authorized by the following statutes: In addition to the provisions of sections 2362 and 2363, Revised Statutes (43 U.S.C. 689, 690), the general laws providing for the return of such moneys are contained in the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) and the act of March 26, 1908 (35 Stat. 48) as amended by the act of December 11, 1919 (41 Stat. 366; 43 U.S.C. 95–98), and as supplemented by the act of June 27, 1930 (46 Stat. 822; 43 U.S.C. 98a).

§ 1822.1 Payments.

§ 1822.1–1 Amount.

(a) The amount of payments required in connection with the processing of any application, sale, entry, lease, permit, or other transaction governed by the regulations in this chapter are set forth in applicable regulations.

(b) The amount of payments required for copies and abstracts of records, including plats and diagrams showing the status of lands, are determined as provided in Part 2 of this title.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.1–2 Forms of remittances.

(a) Subject to the condition set forth in paragraph (b) of this section, forms of remittances that will be accepted in payment of fees, rentals, purchase price, and other charges required by the regulations in this chapter include cash and currency of the United States and checks, money orders, and bank drafts if they are made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the Government.

(b) Personal checks are an acceptable form of remittance except where the regulations in this chapter specifically provide otherwise.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.2 Repayments.

§ 1822.2–1 Filing of applications.

Applications for repayment should be filed on a form approved by the Director with the manager of the proper land office. If there is no such office in the State, they should be filed with the proper State Director of the Bureau of Land Management.

§ 1822.2–2 Statement of grounds for repayment.

Where an application is filed, it should be accompanied by a statement by the applicant setting forth fully the grounds upon which repayment is claimed.

§ 1822.3 Act of June 16, 1880.

§ 1822.3–1 Statutory provisions.

(a) *Act of June 16, 1880.* Section 1 of the act of June 16, 1880 (21 Stat. 287;

43 U.S.C. 263) authorizes the repayment of the fee, commissions, and excess payments required upon the location or entry of soldiers' and sailors' additional homestead rights, which locations or entries are found to be based upon spurious or forged papers and the entries are canceled as fraudulent and void.

(b) *Repayment to entryman, or to his heirs or assigns.* (1) The first clause of section 2 of the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) provides for the repayment of fees, commissions, purchase money, and excesses paid in connection with entries of the public lands that have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry was erroneously allowed and cannot be confirmed. This clause directs that said moneys shall be repaid to the person who made such entry, or to his heirs or assigns, and it requires the surrender of the receipts issued and the execution of a proper relinquishment of all claims to the lands acquired under the invalid entry.

(2) The phrase "erroneously allowed," being the basis for the allowance of repayment under section 2 of the act of June 16, 1880, can not be given an interpretation of such latitude as would countenance fraud. If the records of the Bureau of Land Management, or the proofs furnished, should show that the entry ought not to be permitted, and yet it were permitted, then it would be "erroneously allowed." But if a tract of land were subject to entry, and the proofs showed a compliance with law, and the entry should be canceled because the proofs were shown to be false, it could not be held that the entry was "erroneously allowed"; and in such case repayment would not be authorized.

§ 1822.3–2 Who may receive repayments.

Under section 1 of the act of June 16, 1880 repayment can be made only to the "innocent parties" who paid the moneys, and in order to present a claim thereunder it is necessary that the receipts issued to the claimant be surrendered as a part of the application for repayment. In case the receipts cannot be surrendered, a statement explaining the loss or destruction of the same is required, together with evidence to show that the moneys applied for were paid by the applicant.

§ 1822.3–3 Applications.

(a) *Under section 1 of the Act.* (1) The applicant will be required, in all cases where the void location or entry is made in the name of the original entryman, to furnish the power of attorney, or certified copy thereof, authorizing the applicant to make the additional entry; or furnish such other authenticated evidence as may be produced to show that the applicant is in fact the party who made the void additional entry and paid the moneys in connection therewith.

(2) A concise statement should accompany these applications for repayment, setting forth all the facts and circumstances in connection with the procurement and use of the fraudulent papers upon which the canceled entry was based, together with such other proof as may tend to establish the innocence of the applicant.

(b) *Under first clause, section 2 of the Act.* (1) Claims for repayment should be made on a form approved by the Director or the equivalent thereof, which application must contain a statement that the title to the land under the invalid entry has not been sold or assigned and that the same has not become a matter of record.

(2) In cases where the entry has been made a matter of record, in the archives of the county recording officer, there should be added to the form of application the words "except as shown by accompanying evidence," in which event the evidence hereinafter required must be furnished.

(3) A duly executed relinquishment must be furnished by the applicant on a form approved by the Director.

(4) The relinquishment must be witnessed by two persons.

(5) In cases of commutation homestead entry, final homestead entry, final desert-land entry, and other final certificates, which are canceled, leaving the original entry or base intact, subject to future compliance with the requirements of law, a reservation should be incorporated into relinquishment to the effect: "But excepting from the operation of this relinquished all my rights and title to the described land under original entry No. _____."

§ 1822.3–4 Surrender of receipts.

(a) The receipts showing the payments of the money claimed must be surrendered, but if the same have been lost or destroyed or are not available for any reasons, a statement showing the facts must be furnished.

(b) With applications for repayment of the moneys paid upon canceled commuted homestead entries, final homestead entries, final desert-land entries, mineral entries, coal-land entries, and other final entries, the manager's receipt and the duplicate certificate of entry, whenever such has issued, should be surrendered.

(c) In case the receipt or certificate cannot be surrendered or has been lost or destroyed, a certificate will be required from the proper recording officer of the county within which the land is situate, showing that the same has not become a matter of record and that there is no encumbrance of the title to the land thereunder.

(d) A recorder's certificate must be furnished, as in paragraph (c) of this section, (1) in all cases where the application for repayment is made by another than the original entryman, and (2) in all cases where the claim is based upon an unrecorded deed from the entryman to the party applying for repayment.

§ 1822.3–5 Recording of reconveyance.

(a) *When not required.* In all cases where patent has been issued, upon an invalid entry, a full reconveyance to the United States of all right and title to the land acquired under the patent and entry must be furnished, which deed must be recorded. If a certificate of the recording officer is produced showing that neither the entry nor the patent has been recorded, it is unnecessary to record the reconveyance in case the patent is surrendered.

(b) *When required.* If, however, the patent cannot be surrendered, or should the entry or patent have been recorded, it is necessary that the proper party or parties execute a full reconveyance to the United States and have the same recorded as indicated in the next following sections.

(c) *When quitclaim deed required.* Where title under an invalid entry or patent has become a matter of record, a duly executed quitclaim deed, relinquishing to the United States all right, title, and claim to the land, acquired under the entry, or patent, must accompany the application for repayment.

(d) *Recording of quitclaim deed.* The deed referred to in the preceding section must be duly recorded, and a certificate must also be produced from the proper recording officer of the county wherein the land is situated, showing that said deed is so recorded and that the records of his office do not exhibit any other conveyance or encumbrance of the title to the land.

(e) *Conformance to State laws.* The reconveyance to the United States must conform in every particular to the laws of the State or Territory in which the land is located relative to transfers of real property; in the case of a married man, in localities where the right of dower, or equivalent, exists, the wife must join in the execution of the deed, and in case of an executor or administrator, due proof of authority to alienate the estate.

(f) *Reconveyance unnecessary.* If the applicant has also acquired the valid title conveyed by the United States, a reconveyance of the land is unnecessary, but a relinquishment, waiving all claim under the illegal entry, is required, together with corroborative evidence of the facts, preferably an abstract of title and a statement in full in support of the claim for repayment.

§ 1822.3–6 Repayment to heirs, executors, administrators.

(a) Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained and must show that the parties applying are the heirs and the only heirs of the deceased.

(b) Proof of heirship should be made in the form of a statement, corroborated by two witnesses, setting forth the date of the death of the intestate; whether the intestate left surviving a husband or wife, as the case may be; the full name and age of such husband or wife; the names and ages of all children; and also state whether there is any issue of a deceased child or children. The statement should set forth all the facts, in order that the Bureau of Land Management may determine who are the legal heirs, in accordance with the laws of descent and distribution of the State where the land is situated.

(c) In case there are minor heirs not under the guardianship of a duly appointed guardian, and the amount to be repaid is $200 or less, the surviving parent may execute the application as the natural guardian of such heirs. Such

application should be supplemented with a statement setting forth all the facts in detail.

(d) Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

(e) Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

§ 1822.3–7 Repayment to assignees.

(a) Those persons are assignees, within the meaning of the statutes authorizing the repayment of purchase money, who purchase the land after the entries thereof are completed and take assignments of the title under such entries prior to complete cancellation thereof, when the entries fail of confirmation for reasons contemplated by the law.

(b) Where applications are made by assignees, the applicants must show their right to repayment by furnishing properly authenticated abstracts of title, or the original deeds or instruments of assignment, or certified copies thereof.

(c) In the place of an abstract of title the applicant may furnish a certificate of the recording officer of the county in which the land is situated, showing all alienations or liens affecting title to the land in connection with the entry upon which the claim for repayment is based.

(d) The applicants must also show that they have not been indemnified by their grantors or assignors for the failure of title, and that title has not been perfected in them by their grantors through other sources.

(e) Where there has been a conveyance of the land and the original purchaser applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee.

(f) To construe said statutes so as to recognize the assignment or transfer of the mere claim against the United States for repayment of purchase money, or fees and commissions, disconnected from a sale of the land or attempted transfer of title thereto, would be against the settled policy of the Government and repugnant to section 3477 of the Revised Statutes (31 U.S.C. 203). (2 Lawrence, First Comp. Dec. 264, 266, and 6 Dec. Comp. of the Treasury, 334, 359.)

(g) Assignees of land who purchase after entry are, in general, deemed entitled to receive the repayment when the lands are found to have been erroneously sold by the Government. But this rule does not apply to the repayment of double-minimum excesses. (First Comp. Dec. in case of Adrian B. Owens, Copp's Public Land Laws, 1890, vol. 2, p. 1238.)

§ 1822.3–8 Repayment to mortgagees.

(a) Mortgagees are not assignees within the meaning of the repayment laws, but may become such by pursuing the course suited to the particular case as follows:

(1) Where, after date of entry and prior to cancellation thereof, the land is mortgaged and the mortgagee receives a sheriff's deed under foreclosure proceedings, the mortgagee becomes an assignee. (See 193 U.S. 651, 58 L. ed. 830; 28 L.D. 201, 30 L.D. 136.)

(2) Where a mortgage is executed prior to the cancellation of an entry, and a deed made to the mortgagee after such cancellation, the holder of such deed becomes the assignee. (See 26 L.D. 425.)

(b) In either case, complete evidence must be furnished to establish the applicant's right to repayment by producing the original deeds or instruments, or certified copies thereof showing all transactions, together with certified copies of the court proceedings.

§ 1822.3–9 Repayment of double-minimum excess.

(a) The last clause of the second section of the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263), provides:

> In all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of $1.25 per acre shall in like manner be repaid to the purchaser thereof or to the heirs or assigns.

(b) This clause has been practically absorbed by section 2 of the act of March 26, 1908 (35 Stat. 48; 43 U.S.C. 96).

(c) The applicant must show that he is the identical party who made the entry on which repayment is claimed, as contained in the form of application.

(d) Repayment of double-minimum excess will be made only to the original entryman, his heirs or assigns. The sale and transfer of the land is not of itself treated as an assignment of the right to receive repayment of double-minimum excess.

§ 1822.4 Act of March 26, 1908.

§ 1822.4–1 Statutory provisions.

(a) The act of March 26, 1908, as amended (35 Stat. 48, 41 Stat. 366; 43 U.S.C. 95–98) provides for the repayment of certain commissions, excess payments, and purchase moneys paid under the public land laws and is additional to the provisions of sections 2362 and 2363, Revised Statutes (43 U.S.C. 689, 690), and to the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263).

(b) The act of June 27, 1930 (46 Stat. 822; 43 U.S.C. 98a) makes the provisions of the act of March 26, 1908, as amended, "applicable to all payments in excess of lawful requirements made under the act of Congress approved February 25, 1920 (41 Stat. 437); and under any statute relating to the sale, entry, lease, or other disposition of the public lands."

(c) The first section of the act of March 26, 1908, as amended, authorizes the return to the applicant, or his legal representatives, of purchase moneys and commissions covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, where such application has been or shall be rejected, in cases where neither the applicant nor his or her legal representatives shall have been guilty of any fraud or attempted fraud in connection with said application.

(d) The first section of the act of March 26, 1908, as amended, refers more particularly to moneys covered into the Treasury of the United States which were paid in connection with rejected applications to make entry, proof, etc., but it also contemplates the repayment of moneys paid in connection with allowed entries and proofs, which entries or proofs should have been rejected. (See 43 L.D. 104.)

(e) The second section of the act of March 26, 1908 as amended, authorizes the return to the person who made the payment, or to his legal representatives, of any moneys paid under any of the land laws of the United States, in excess of the legal requirements.

(f) (1) The act of Congress, approved December 11, 1919 (41 Stat. 366; 43 U.S.C. 95–98), limits the time of filing repayment claims under the act of March 26, 1908 (35 Stat. 48) to 2 years.

(2) The time of filing claims for repayment is limited to 2 years from rejection of the application, entry, or proof; and in case of payments in excess of lawful requirements, claims for repayment must be filed within 2 years from issuance of patent. (See act of June 27, 1930, 46 Stat. 822; 43 U.S.C. 98a.)

§ 1822.4–2 Definitions.

(a) *Legal representatives.* The term "legal representatives" includes heirs, executors, and administrators, and where application is made by either of them due proof must be furnished as required by § 1822.3–6 (d) or (e), as the case may be.

(b) *Assignees.* Assignees also come within the purview of this term, but only in such instances as would not be repugnant to section 3477, Revised Statues (31 U.S.C. 203).

§ 1822.4–3 Evidence of assignment.

Where applications are made by assignees, the evidence required under § 1822.3–7 (b) and (c) as the case may be, must be furnished.

§ 1822.4–4 Assignments—where permitted, where prohibited.

(a) Section 3477, Revised Statutes (31 U.S.C. 203), prohibits the transfer of assignment of claims against the United States, and therefore any attempted transfer or assignment of a claim under either of the before-mentioned sections cannot be recognized, except in certain cases, coming under section 1 of the act of March 26, 1908. (See 42 L.D. 181.)

(b) The instances in which assignees are authorized to receive repayment under the act of March 26, 1908, would be in cases where entries are allowed, but which should have been rejected, and after the date of such entries and prior to the cancellation thereof, valid attempts are made to transfer the lands entered; and further, in cases where proofs and payments are made, but certificates of entry withheld, and thereafter valid assignments are made of all right, title, and interest in and to the lands involved. (43 L.D. 477, and 44 L.D. 516.)

§ 1822.4–5 Fraud or attempted fraud.

What constitutes "fraud or attempted fraud" within the meaning of section 1 of the act of March 26, 1908 (35 Stat. 48; 43 U.S.C. 95), such as will bar repayment, affords a wide degree of latitude, and it necessarily follows that each claim for repayment must be adjudicated upon a finding of the record in the case.

Subpart 1823—Proofs and Testimony

AUTHORITY: The provision of this Subpart 1823 issued under R.S. 2478, 43 U.S.C. 1201.

§ 1823.1 Time and place; appearances.

§ 1823.1–1 Time; place; continuance.

Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a.m. and 6 p.m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof cannot be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

§ 1823.1–2 Who may appear.

Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the manager for his consideration and action.

§ 1823.2 Procedures.

§ 1823.2–1 Examination of claimant and witnesses.

All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the manager with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the manager of any facts not set out in the testimony which in his judgment cast suspicion upon the good faith of the applicant or the validity of the entry.

§ 1823.2–2 Testimony to be taken separate and apart from and not within the hearing of the others.

The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

§ 1823.2–3 Advice concerning laws and penalties for false swearing.

Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

§ 1823.2–4 Fees; costs.

(a) *Reducing testimony to writing.* On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until such payment has been made.

(b) *Administering oath, preparation of paper and writing out testimony; penalty.* No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of $1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the Revised Statutes (43 U.S.C. 254).

§ 1823.3 Transmittal of proof papers.

The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the manager. In no case should the transmittal thereof be left to the claimant.

§ 1823.4 Proof on entries in more than one district.

(a) In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. If the notice is published correctly and the proof is satisfactory, the manager who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the manager of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in his district, issue final certificate for that portion without further proof.

(b) Should a proof be rejected by the office from which the notice of intention is issued the appeal or further showing must be filed in the office which rejected the proof.

§ 1823.5 Conduct of officers.

§ 1823.5–1 Prohibited activities.

(a) No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

(b) No officer authorized to take final proofs should, either for himelf or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any affidavit, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any manner any fee, commission, compensation, emolument, or benefit arising therefrom, except for the lawful discharge of his official duties.

§ 1823.5–2 Penalty for violation of the rules.

Any officer violating any of the rules set forth in this Subpart 1823 may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All managers and State Directors have been charged to use their utmost diligence in seeing that the rules in this Subpart 1823 are fully and in good faith complied with,

and directed to investigate and fully report any apparent violations thereof which may come to their notice.

Subpart 1824—Publication and Posting of Notices

AUTHORITY: The provisions of this Subpart 1824 issued under 20 Stat. 472; U.S.C. 251.

§ 1824.0–1 Purpose.

The object of the law requiring publication of notices of intended final proof on entries of public lands is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Bureau of Land Management.

§ 1824.1 Selection of newspaper.

§ 1824.1–1 Qualifications of newspaper.

(a) A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed a qualified medium of notice unless it shall have been continuously published during an unbroken period of 6 months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (39 CFR, Part 22).

(b) The notice must, in all cases, be published in the newspaper which is published at a place nearest to the lands which the notice affects.

(c) It is not necessary that the newspaper nominated as the medium of such notice shall be published in the same county as that in which the land lies, or even in the same land district. On the contrary, a newspaper published in an adjoining county, if its place of publication is nearer to the land than that of any other newspaper, must be designated, as the agency of publication, if it is also qualified by reason of its general circulation in the vicinity of the affected lands.

§ 1824.1–2 Discretionary authority of manager; limitations.

(a) The law invests managers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred.

(b) In designating papers in which notices of intention to make final proof under the act of March 3, 1879 (20 Stat. 472; 43 U.S.C. 251) shall be published, the manager shall designate only such reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by State laws for the publication of legal notices.

§ 1824.2 Protests.

§ 1824.2–1 By editor or proprietor.

(a) No appeal will lie from the action of the manager in refusing to name any particular newspaper as an agency for the publication of notices concerning claims to public lands. But any editor or proprietor of a newspaper who believes and desires to charge that a notice of proof in support of any claim to public land has been published in a paper disqualified by the rules and principles stated in this part, to serve as the medium of such notice, may file in the land office from which such notice emanated a written protest against the acceptance of the proof submitted in accordance with such notice. Such protest should set forth all material and essential facts within the knowledge of the protestant, or of which he has reliable information and which he believes to be true, and which, if duly established by proof, would require a determination that the newspaper in which the notice was published was and is not a reputable and established publication, printed, in good faith, for the diffusion of local and general news; or that it is and was not the paper published nearest to the land affected by said notice, and that there is another newspaper published at a place nearer to said lands, equally well qualified in all respects to convey notice of the claim thereto asserted; or any other cause of disqualification expressed and defined in and by this Subpart 1824.

(b) Any such protest must be accompanied by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the post office nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the post office at the place of publication, that fact should be stated.

§ 1824.2–2 Evidence required.

Any such protest must be accompaned by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the post office nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the post office at the place of publication, that fact should be stated.

§ 1824.2–3 Action by manager.

Where any protest has been filed in the manner prescribed in this part it shall be the duty of the manager to immediately consider same and to proceed thereon as in other cases of protests against final proofs. If he should conclude that the facts stated in the protest are insufficient to warrant an order for a hearing, he will render decision to that effect and duly notify the protestant thereof, at the same time advising him of his right of appeal in the manner and within the time prescribed by Parts 1840 and 1850.

§ 1824.2–4 Manager's decision final; exception.

In all cases where no appeal is prosecuted from a decision by the manager dismissing a protest, that decision will be considered final as to the facts; and acquiescence therein by the Bureau of Land Management will be refused only when it is manifest that it was error to determine that no proper ground of protest was sufficiently alleged.

§ 1824.2–5 Protest by individual.

Any person having knowledge of the failure of a manager to designate the proper newspaper for the publication of notice of final proof may file with the proper State Director a statement fully setting forth all the facts and circumstances.

§ 1824.3 Payment for republication of notice.

(a) The law imposes upon managers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication.

(b) Neglect of the duty defined in paragraph (a) of this section, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the entire cost of such republication shall be borne by the Government. If an error is committed by the printer of the paper in which the notice appears, the manager may require such printer to correct his error by publishing the notice anew for the necessary length of time at his own expense, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

nated, as the agency of publication, if it

§ 1824.4 Frequency of publication.

(a) In many cases it is necessary to designate a daily paper in which to publish the notices of intention to submit final proof required to be given by homestead and desert land entrymen as well as the notices of location of scrip, warrants, certificates, and lieu selections, and other cases.

(b) The expense of publishing such notices for the prescribed period in every issue of a daily paper is often prohibitive, and the object of publication of such notices can be accomplished by a less number of insertions. Therefore, in all cases where the law does not specifically otherwise direct, publication will be made as follows:

(1) Where publication is required for 30 days, if the manager designates a daily paper, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues, and if semiweekly, or triweekly, in any one of the weekly issues for five consecutive weeks.

(2) Where publication is required for 60 days, except in mining cases, if the manager designates a daily paper the notice should be published in the Wednesday issue for nine consecutive issues; if weekly in nine consecutive issues; if semiweekly or triweekly in any one of the weekly issues for nine consecutive weeks.

(c) Publication of notice in mining cases must be made in accordance with § 3453.1 of this chapter.

§ 1824.9 Alaska.

§ 1824.9–1 Statutory requirements.

(a) The requirements with reference to publication of proof notices in homestead cases in Alaska, where a special survey has been made, are set forth in §§ 1824.9–2 and 2211.9–7(b) of this chapter. The requirements of the law with reference to publication are contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359). These requirements are applicable to homestead entries, soldiers' additional entries, and trade and manufacturing sites.

(b) In Alaska, in the classes of entries mentioned, the important feature of proof notices is to inform all interested parties of the geographical location of the land, and the information should be given in such a way that the people who read the notice will be able to interpret it properly. The metes and bounds description is technical, and not generally understood. Hence, in these cases, it is not of much value to the general public as a means of identification of land. The metes and bounds description adds to the length of the notice and to the cost of the notice to the claimant. The statute does not require the inclusion of such description in the published notice.

(1) Adverse claimants may inform themselves as to the exact location of the land by the markings on the ground or from a copy of a plat of survey which must be filed in the land office and posted on the land.

(2) It is believed, therefore, that in the cases mentioned, and for the reasons stated, the inclusion of the metes and bounds descriptions in the published notices is objectionable and unnecessary. It is directed, therefore, that such descriptions be omitted.

(c) In the cases referred to, as a means of identification of the land, the manager will cause each notice issued to give the survey number and area of the claim, with a statement as to the general location of the land. If the survey is not tied to a corner of the rectangular system of the public-land surveys the notice should give the name and number of the location monument to which some corner of the survey is tied, and the course and distance from the location monument to such corner, with approximate latitude and longitude. If the survey is tied to a corner of the rectangular system of the public-land surveys, such corner should be identified by section, township, and range. The statement as to general location will identify the land as shown on the plat of survey or otherwise as the manager may deem best. The statement, where possible, should refer to the land in connection with some well-known topographical point or natural object or monument, river, trail, town, mining camp, etc.

§ 1824.9–2 Description of special surveys.

(a) Where a special survey has been made, the notice of proof must give the survey number of the land, and other information required by § 1824.9–1 and it must be published once a week for nine consecutive weeks, in accordance with § 1824.4, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(b) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 1824.4. The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

§ 1824.9–3 Proof.

The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and proof notice were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

Subpart 1825—Relinquishments

AUTHORITY: The provisions of this Subpart 1825 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1825.1 When relinquished land becomes subject to further appropriation.

(a) Upon the filing in the proper land office of the relinquishment of a homestead claim, the land, if otherwise available, will at once become subject to further application or other appropriation in accordance with the applicable public land laws. A provision to this effect is contained in section 1 of the act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 202)

(b) Upon the filing of a relinquishment of an entry or claim (other than a homestead claim), or a lease, the land will not become subject to further application or other appropriation until the entry, claim or lease has been canceled pursuant to the relinquishment and the fact of the cancellation has been noted on the tract books in the land office.

§ 1825.2 Relinquishment of right-of-way.

The relinquishment of an approved right-of-way may be conditioned upon the approval of a subsequent application, filed as an amendment to the approved right-of-way, or as an independent application, but conflicting in whole or in part with the approved right-of-way. Such a relinquishment will not be accepted and noted on the land office tract books until action on the subsequent application is taken.

§ 1825.3 Repayment cases.

This subpart applies only to cases wherein the entry shall have been relinquished in its entirety. It in no wise modifies § 1822.3–3(b)(5) which relates solely to applications for repayment of moneys paid in connections with commutation entries, final homestead entries, final desert-land entries, and other final certificates where it is the intention of the applicant for repayment to merely suffer cancellation of the final entry, leaving the basic entry intact subject to future compliance with the public land laws.

Subpart 1826—Reinstatement of Canceled Entries

AUTHORITY: The provisions of this Subpart 1826 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1826.1 Application for reinstatement.

(a) An application for the reinstatement of a canceled entry, while pending, operates to reserve the land covered thereby from other disposition.

(b) Applications for reinstatement of canceled entries must be filed in the proper land office and must be executed by the entryman, his heirs, legal representatives, assigns, or transferees, as the case may require. If made by other than the entryman, such petition for reinstatement must fully set forth the nature and extent of petitioner's interest in the land, how acquired, and the names and addresses of any other person or persons who have or claim an interest therein. All petitions for reinstatement should set forth all facts and state clearly and concisely upon, what

grounds reinstatement is urged. Such petition must be signed by the applicant.

(c) Applications for reinstatement of canceled entries executed by agents and attorneys will not be recognized.

(d) Should an application for reinstatement be filed not conforming to the foregoing, the manager will promptly advise the party thereof, calling his attention to the defects and allow 15 days in which to file a proper application.

(e) All applications must be accompanied by an application service fee of $10 which will not be returnable.

PART 1840—APPEALS PROCEDURES

Subpart 1840—Appeals Procedures; General

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1840.0–3 Authority.
1840.0–5 Definitions.
1840.0–6 Documents.
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1842.2 Who may appeal.
1842.4 Appeal; how taken, filing fee, mandatory time limit.
1842.5 Examination of case record.
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Subpart 1843—Actions by Director

1843.5 Request for hearings on appeals involving questions of fact.
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Subpart 1844—Appeals to Secretary of the Interior

1844.1 Right of appeal to the Secretary of the Interior.
1844.2 Appeal; how taken, filing fee, mandatory time limit.
1844.3 Statement of reasons, written arguments, briefs.
1844.4 Service of notice of appeal and of other documents.
1844.5 Answers.
1844.6 Oral argument.
1844.9 Finality of decision.

AUTHORITY: The provisions of this Part 1840 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

Subpart 1840—Appeals Procedures; General

§ 1840.0–3 Authority.

Sections 1840.0–3 to 1844.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1840.0–5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

§ 1840.0–6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7 (c).

(c) *Record address.* Every person who files a document in connection with an appeal or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and

be given the same notice of any appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Whereever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) With the exception of the time fixed for filing a notice of appeal, the time for filing or serving any document in connection with an appeal may be extended by the officer to whom the appeal is taken.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1840.0–7 Summary dismissal.

An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

§ 1840.0–8 Basis of decision.

(a) Where a hearing has been held in a contest the record made shall be the sole basis for decision on appeal except to the extent that official notice may be taken of a fact as provided in § 1850.0–8 (b).

(b) No decision on appeal shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal.

§ 1840.0–9 General provisions.

(a) *Effect of decision pending appeal.* Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the officer to whom an appeal may be or is taken may provide that a decision or any part of it shall be in full force and effect immediately.

(b) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(c) *Inquiries.* No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(d) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1842—Appeals to the Director of the Bureau of Land Management

§ 1842.2 Who may appeal.

Except as otherwise provided in Subpart 2411 of this chapter, any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or person signing for the Director, shall have a right of appeal to the Director.

§ 1842.4 Appeal; how taken, filing fee, mandatory time limit.

(a) A person who wishes to appeal to the Director must file in the office of the officer who made the decision (not the office of the Director) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make. This paragraph does not apply to grazing appeals filed pursuant to § 1853.7(a).

(b) Except where an agency of the Federal Government or of a State government or political subdivision thereof or a municipal corporation is the appellant, or where a grazing appeal is taken pursuant to § 1853.7(b), a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the office where the notice of appeal is required to be filed within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 1840.0–6 (a) and (b), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 1840.0–6 (a) and (b) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will by closed by the Director.

§ 1842.5 Examination of case record.

§ 1842.5–1 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b). In any case the appellant will be permitted to file in such office additional

statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 1842.5–2 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 1840.0–6(e), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7. Proof of such service as required by § 1840.0–6(e) must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) within 15 days after service unless filed with the notice of appeal.

§ 1842.5–3 Answers.

If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) and must be served on the appellant, in the manner prescribed in § 1840.0–6(e), not later than 15 days thereafter. Proof of such service, as required by § 1840.0–6(e), must be filed in the office of the Director (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b).

Subpart 1843—Actions by Director

§ 1843.5 Request for hearings on appeals involving questions of fact.

Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to a Field Commissioner of the Bureau of Land Management for such a hearing. Such a request must be made in writing and filed with the Director within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a Field Commissioner for a hearing on an issue of fact. If a hearing is ordered, the Director will specify the issues upon which the hearing is to be held.

§ 1843.5–1 Deposit.

If a request for a hearing is granted, a deposit of $20 toward reporters' fees will be required of the parties who made the request. Other parties who appear at the hearing will be requested to pay their share of the fees at that time.

§ 1843.6 Request for oral argument.

The Director may, in his discretion, grant an opportunity for oral argument before him or a person designated by him.

§ 1843.7 Decision by Director.

The Director will render a written decision in each case appealed to him. Such decisions will be served on all parties and shall be subject to an appeal to the Secretary as provided in Subpart 1844.

§ 1843.9 Effect of failure to appeal.

When any party fails to appeal to the Secretary from an adverse decision of the Director, that decision shall as to such party be final and will not be disturbed except for fraud or for gross irregularity.

Subpart 1844—Appeals to Secretary of the Interior

§ 1844.1 Right of appeal to the Secretary of the Interior.

Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official.

§ 1844.2 Appeal; how taken, filing fee, mandatory time limit.

(a) A person who wishes to appeal to the Secretary must file in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the Director's office within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the Director's office within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 1840.0–6 (a) and (b), the notice of appeal will not be considered and the case will be closed by the Director. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 1840.0–6 (a) and (b) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Secretary.

§ 1844.3 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b). In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 1844.4 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 1840.0–6(e), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7. Proof of such service as required by § 1840.0–6(e) must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) within 15 days after service unless filed with the notice of appeal.

§ 1844.5 Answers.

If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) and must be served on the appellant, in the manner prescribed in § 1840.0–6(e), not later than 15 days thereafter. Proof of

party may, if he desires a hearing to

such service, as required by § 1840.0–6 (e), must be filed in the office of the Secretary (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b).

§ 1844.6 Oral argument.

The Secretary may in his discretion grant an opportunity for oral argument before him or a person designated by him.

§ 1844.9 Finality of decision.

No appeal will lie in the Department from a decision of the Secretary.

PART 1850—HEARINGS PROCEDURES

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Subpart 1850—Hearing Procedures; General

AUTHORITY: The provisions of this Subpart 1850 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1850.0–3 Authority.

(a) Sections 1850.0–3 to 1852.3–9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

(b) Sections 1853.1 to 1853.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201 and sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

(c) Sections 1855.1 to 1855.9–2 are issued under the authority of R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1850.0–5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

§ 1850.0–6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7(c) and does not apply to requests for postponement of hearings under §§ 1852.3–1 and 1852.3–2 and request for relief from reporter's fees under § 1852.3–6.

(c) *Record address.* Every person who files a document in connection with a contest or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the postofice of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) The Manager or the Examiner, as the case may be, may extend the time for filing or serving any document in a contest.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1850.0–7 Subpoena power and witness provisions.

(a) *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821. Subpoenas will be issued on a form approved by the Director.

(b) *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be.

(c) *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

§ 1850.0–8 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of the Director, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in a contest the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the contest.

(b) *Official notice.* Official notice may be taken of the contents of the tract books, the serial registers, the approved plats of survey and other public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Where a decision in a case in which a hearing has been held rests upon official notice of a material fact relating to an issue upon which the hearing was held, the decision will so state and will allow any party upon request to have an opportunity to show to the contrary. Such request must be filed and served within the time and in the manner prescribed in the decision. Where a decision or recommendation has rested upon such official notice and has afforded the parties an opportunity to show to the contrary, no further opportunity to show to the contrary will be allowed.

§ 1850.0–9 General provisions.

(a) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(b) *Inquiries.* No person other than officers or employees of the Department

of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(c) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1851—Hearings on Appeals Involving Questions of Fact

AUTHORITY: The provisions of this Subpart 1851 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1851.1 Prehearing conferences.

(a) The Field Commissioner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau of Land Management, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings before the Field Commissioner or before the Director.

(b) The Field Commissioner shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the Field Commissioner unless modified for good cause, by subsequent order.

§ 1851.2 Fixing of place and date for hearing; notice.

The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 1851.2–1 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justified beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1851.3 Authority of the Field Commissioner.

The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102–106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Director in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by § 1850.0–7.

§ 1851.4 Conduct of hearing.

So far as not inconsistent with the prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts. Unless the Field Commissioner directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 1851.5 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Field Commissioner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 1851.6 Reporter's fees.

(a) Where a hearing is requested, each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross examination of other witnesses.

(b) Where a hearing is ordered by the Director upon his own motion, each party who prevails in the Director's decision will be required to pay the reporter's fees covering the party's direct evidence and cross examination of other witnesses. The remainder of the reporter's fees will be paid by the Government.

(c) Reporter's fees will be at rates established for the local courts or, if the reporting is done pursuant to a contract, at rates established by the contract. The Field Commissioner may require the parties to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Any part of a deposit not used will be returned to the depositor except that deposits which are required pursuant to § 1843.5–1 in advance of a hearing will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States.

§ 1851.7 Copies of transcript.

Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 1851.8 Summary of evidence.

The parties and the Bureau may, with the consent of the Field Commissioner, agree that a summary of the evidence approved by the Field Commissioner may be filed in the case in lieu of a transcript. In such case the Field Commissioner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record. If, on appeal to the Secretary, a party wishes to utilize the transcript instead of the summary, he must furnish at his expense a copy of the transcript for the case record.

§ 1851.9 Action by Field Commissioner.

Upon completion of the hearing and the incorporation of the summary or transcript in the record, the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary.

Subpart 1852—Contest and Protest Proceedings

AUTHORITY: The provisions of this Subpart 1852 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1852.1 Private contests and protests.

§ 1852.1–1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in the subpart.

§ 1852.1–2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 1852.1–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the land office which has jurisdiction over the land involved, or, if there is no such land office, in the Office of the Director, Bureau of Land Management, Washington, D.C., 20240. The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 1850.0–6(e), in the office where the complaint was filed within 30 days after service.

§ 1852.1–4 Complaints.

(a) *Contents of complaint.* The complaint shall contain the following information, under oath:

(1) The name and address of each party interested, including the age of each heir of any deceased entryman.

(2) A legal description of the land involved.

(3) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest in, such land.

(4) A statement in clear and concise language of the facts constituting the grounds of contest.

(5) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so.

(6) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith.

(7) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated.

(8) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant.

(9) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed.

(b) *Amendment of complaint.* Except insofar as the Manager, Examiner, Director or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the examiner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

(c) *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

(d) *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

§ 1852.1–5 Service.

The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 1850.-0–6(e). If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal service, by post-office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in § 1852.5(b)(1). When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the legal guardian or committee, if there be one, of such infant or person of unsound mind; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

(a) *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of §§ 1852.1–4 (a) and (c), or if the complaint is not served upon each contestee as required by this section, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived.

(b) *Service by publication*—(1) *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(i) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(ii) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(iii) State the last known address of the contestee; and

(iv) State in detail the efforts and inquiries made to locate the party sought to be served.

(2) *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

(3) *Publication, mailing and posting of notice.* (i) Notice by publication shall be made by publishing notice at least once a week for five successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(ii) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(iii) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

(c) *Proof of service.* (1) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with § 1852.1–5(b)(3).

(2) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director as to posting in his office.

(3) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 1852.1–6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 1852.1–5(b)(3). The answer shall contain or be accompanied

by the address to which all notices or other papers shall be sent for service upon contestee.

§ 1852.1–7 Action by Manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decided the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an examiner upon determining that the elements of a private contest appear to have been established.

§ 1852.1–8 Amendment of answer.

At the hearing, any allegation not denied by the answer will be considered admitted. The examiner may permit the answer to be amended after due notice to other parties and an opportunity to object.

§ 1852.2 Government contests.

§ 1852.2–1 How initiated.

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 1852.2–2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) No filing fee or deposit toward reporter's fee shall be required of the Government.

(c) Any action required of the contestant may be taken by any authorized Government employee.

(d) The statements required by § 1852.1–4(a) (5) and (6) need not be included in the complaint.

(e) No posting of notice of publication on the land in issue shall be required of the Government.

(f) Where service is by publication, the affidavits required by § 1852.1–5(b) (1) need not be filed. The contestant shall file with the Manager a statement of diligent search which shall state that the contestee could not be located after diligent search and inquiry, the last known address of the contestee and the detail of efforts and inquiries made to locate the party sought to be served. The diligent search shall be concluded not more than 15 days prior to filing of the statement.

(g) In lieu of the requirements of § 1852.1–5(b) (3) (ii) the contestant shall, as part of the diligent search before the publication or within 15 days after the first publication send a copy of the complaint by Certified Mail, return receipt requested, to the contestee at the last address of record. The return receipts shall be filed in the office in which the contest is pending.

(h) The affidavit required by § 1852.1–5(b) (3) (iii) need not be filed.

§ 1852.3 Proceedings before the examiner.

§ 1852.3–1 Prehearing conferences.

(a) The Examiner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Examiner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the Examiner unless modified for good cause, by subsequent order.

§ 1852.3–2 Notice of hearing.

The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

§ 1852.3–3 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1852.3–4 Authority of Examiner.

The Examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (43 U.S.C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by § 1850.0–7.

§ 1852.3–5 Conduct of hearing.

So far as not inconsistent with a prehearing order, the Examiner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 1852.3–6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross examination. The Examiner may question any witness. Documentary evidence may be received if pertinent to any issue. The Examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Examiner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of an Examiner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 1852.3–7 Reporter's fees; transcript.

(a) Each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross-examination of other witnesses except that

(1) In the case of a private contest, if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(2) In the case of a Government contest, if the ultimate decision is adverse to the Government, the Bureau must pay all the reporter's fees otherwise payable by the contestee.

(3) In the case of a Government contest the contestee may be relieved of paying his share of the reporter's fees if he is financially unable to pay his share. In order to secure such relief he must file with the Examiner at least 15 days prior to the date set for the hearing a request

for such relief, supported by an affidavit setting forth in detail facts showing his financial inability to pay. If the Examiner in his discretion determines that the applicant for relief is financially unable to pay his share of the reporter's fees, the Bureau will bear the cost of such share.

(b) Except where a party is relieved of paying the reporter's fees pursuant to subparagraph (3) of paragraph (a) of this section, each party shall be required by the examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits must be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (a) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(c) Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost.

§ 1852.3–8 Findings and conclusions; decision by hearing examiner; submission to Director for decision.

(a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the examiner, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Director may require, in any designated case, that the examiner make only a recommended decision and that the decision and the record be submitted to the Director for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Director shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

§ 1852.3–9 Appeal to Director.

Any party, including the Government, adversely affected by the decision of the examiner may appeal to the Director as provided in Part 1840. No further hearing will be allowed in connection with the appeal to the Director but the Director, after considering the evidence, may remand any case for further hearing if he considers such action necessary to develop the facts.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under Sec. 2, 48 Stat. 1270, 48 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues

involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the

State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

AUTHORITY: The provisions of this Subpart 1855 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1855.1 Petitions of native groups.

Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1952. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

§ 1855.2 Hearing and notice.

The Secretary of the Interior or such other presiding officer as may be designated by the Secretary of the Interior shall hold public hearings upon the possessory claims of native groups of Alaska. The Secretary will give notice of the hearings by publication of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. The Secretary will also cause a copy of the said notice to be mailed to the last known address of all parties who are shown by the preliminary investigations to have interests in the area concerned which may be adversely affected by the claims asserted. The hearing may be continued from time to time and adjourned to a later date or a different place without notice other than the announcement thereof by the presiding officer at the hearing.

§ 1855.3 Powers of presiding officer.

(a) The hearing shall be conducted in an informal but an orderly manner in accordance with the rules of practice hereinafter set forth. Matters of procedure not covered by this section shall be determined by the presiding officer. He shall have power to: (1) Administer oaths; (2) rule upon motions and requests; (3) examine witnesses and receive evidence; (4) admit or exclude evidence and rule upon objections; (5) hear oral arguments and receive memoranda on facts and law in his discretion; (6) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(b) At any stage of the hearing, the presiding officer may call for further evidence upon any matter. In the event that the hearing shall be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place for the taking of evidence shall be published in the FEDERAL REGISTER and sent to all parties who appeared at the hearing.

(c) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

§ 1855.4 Appearances.

Any interested person including any agency of the Department or other governmental agency shall be given an opportunity to appear either in person or through authorized counsel or other representation and to be heard with respect to matters relevant and material to the proceeding. Each such person or representative shall be required to inform the presiding officer of his name and address, the names, addresses and occupations of persons, if any, whom he represents and the position he takes with respect to the issues of the hearing. Where a person appears through counsel or representation, such counsel or representative shall before proceeding to testify, or otherwise to participate in the hearing, state for the record his authority to act as such counsel or representative.

§ 1855.5 Evidence.

(a) The evidence of the witnesses shall be given under oath. Witnesses may be questioned by the presiding officer or by any person who has entered an appearance for the purpose of assisting the presiding officer in ascertaining the material facts with respect to the subject matter of the hearing.

(b) The evidence, including affidavits, records, documents and exhibits received at the hearing, shall be reported and a transcript thereof shall be made. In the discretion of the presiding officer, written evidence may be received without being read into the record. Every party shall be afforded adequate opportunity to cross-examine, rebut or offer contravening evidence. Evidence shall be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

§ 1855.5–1 Rules of evidence.

All evidence having reasonable probative value shall be admitted, regardless of common law or statutory rules of evidence, but immaterial, irrelevant or unduly repetitious evidence shall be excluded.

§ 1855.5–2 Opinion evidence.

In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

§ 1855.5–3 Stipulations.

In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

§ 1855.5–4 Depositions.

The presiding officer may order evidence to be taken by deposition at any stage of the proceeding before any person designated by him and having the power to administer oaths or affirmations. Unless notice be waived no deposition shall be taken except after reasonable notice to the parties. Any person desiring to take a deposition of a witness shall make application in writing setting out the reasons why such deposition should be taken and stating the time when, the place where, and the name and address of the person before whom it is desired the deposition should be taken, the name and address of the witness and the subject matter concerning which the witness is expected to testify. If good reason be shown, the presiding officer will make and serve upon the parties or their attorneys an order naming the witness whose deposition is to be taken and specifying the time when, the place where, and the person before whom the witness is to testify. These may or may not be the same as those named in the application. The deponent shall be subject to cross-examination by all the parties appearing. In lieu of oral cross-examination, parties may transmit written cross-interrogations to the deponent. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the officer. Such deposition, unless otherwise ordered by the presiding officer for good cause shown, shall be filed in the record in the proceeding and a copy thereof supplied to the party upon whose application said deposition was taken or his attorney.

§ 1855.5–5 Objections.

It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

§ 1855.6 Oral arguments and briefs.

(a) Oral arguments may be permitted in the discretion of the presiding officer. Such arguments shall be made a part of the transcript, if the presiding officer so orders.

(b) Briefs and proposed findings of fact and conclusions of law may not be filed after 30 days from the close of the hearing unless otherwise ordered by the presiding officer.

§ 1855.7 Filing the record of the hearing.

As soon as practicable after the close of the hearing the complete record shall be filed with the presiding officer. It shall consist of the transcript of the testimony and include exhibits and any written arguments that may have been filed. This record shall be the sole official record. No free copies of the record will be available in any proceeding under this section.

§ 1855.8 Determination by the Secretary of the Interior.

§ 1855.8–1 Report of findings and conclusions by presiding officer.

Within a reasonable time of the filing of the record of the hearing, the presiding officer shall file with the Secretary of the Interior a report upon the possessory claims of the petitioner which shall contain findings of fact and conclusions of law with respect to such claims. Unless final authority has been delegated by the Secretary to the presiding officer, the Secretary of the Interior will approve, disapprove or modify the findings and conclusions of the presiding officer. The determinations finally made shall be published in the FEDERAL REGISTER and a copy thereof shall be mailed to each party who appeared at the hearing or who received actual written notice of the hearing.

§ 1855.8–2 Rehearing.

Upon good cause shown within 30 days of the publication of the presiding officer's report, the Secretary in his discretion may order a rehearing.

§ 1855.9 Publication and revision.

§ 1855.9–1 Public notice of regulations.

Public notice of the issuance of the foregoing rules of practice for hearings shall be given by publishing the same in the FEDERAL REGISTER.

§ 1855.9–2 Revision of subpart.

This subpart may be revised by the Secretary of the Interior at any time without prior notice and such revision shall be published in the FEDERAL REGISTER.

PART 1860—CONVEYANCING DOCUMENTS

Subpart 1861—Final Certificates

Sec.
1861.1 Names of claimants.
1861.2 Entries in more than one land district.

Subpart 1862—Patent Preparation and Issuance

1862.0–3 Authority.
1862.1 Contents.
1862.2 Delivery.
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1862.4 Patent to be withheld pending report from Forest Service.
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1862.7 Reservations in patents, Alaska.

Subpart 1863—Other Title Conveyances

1863.5 Title transfer to the Government.
1863.5–1 Evidence of title.

Subpart 1861—Final Certificates

AUTHORITY: The provisions of this Subpart 1861 issued under R.S. 2478, 43 U.S.C. 1201.

§ 1861.1 Names of claimants.

Full names of claimants should appear in applications, final certificates, and patents.

§ 1861.2 Entries in more than one land district.

In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. If the notice is published correctly and the proof is satisfactory, the manager who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the manager of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in his district, issue final certificate for that portion without further proof.

Subpart 1862—Patent Preparation and Issuance

AUTHORITY: The provisions of this Subpart 1862 issued under R.S. 2450, as amended; 43 U.S.C. 1161.

§ 1862.0–3 Authority.

(a) Patents for all grants of land shall be issued under the authority of the Director and signed in the name of the United States (act of June 17, 1948, 62 Stat. 476; 43 U.S.C. 15). The patents shall be recorded in the Bureau of Land Management in books kept for that purpose.

(b) Where a conveyance of land is made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Director, Bureau of Land Management is authorized and directed by section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872), if the deed of conveyance has been recorded, to execute a quit-claim deed of the conveyed land to the party or parties entitled thereto.

§ 1862.1 Contents.

(a) Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his death before making proof, to the statutory successor making the proof, provided by law.

(b) The recitals and description of land in patents will in all cases follow the manager's certificate of entry or location, as prescribed by law.

(c) The Bureau of Land Management will cause a new patent to be issued whenever it appears that a patent was regularly issued and the patent record on file in the Bureau of Land Management is imperfect in that it does not contain the name, or the initials, of the signing and the countersigning officers.

§ 1862.2 Delivery.

(a) *Issued on or after August 1, 1950.* When a patent issued on or after August 1, 1950, is ready for delivery it will be transmitted to the patentee or his or her recognized agent or successor in interest.

(b) *Issued before August 1, 1950.* Original patents (issued before August 1, 1950) on file in land offices, or which have been returned to the Washington office of the Bureau of Land Management from such offices upon their discontinuance, may be procured upon

proper request therefor made to the Washington office of the Bureau of Land Management.

(c) *Delivery of erroneously canceled patents.* (1) The decision of the Supreme Court in the case of U.S. ex rel. McBride v. Schurz (102 U.S. 378, 26 L. ed. 166) in effect, holds that the patentee of lands takes the title of the Government by matter of record, and that after the record is complete, "there remain" but "the duty simply ministerial, to deliver the patent to the owner."

(2) From the opinion in the case, it clearly appears that the court intended to insist upon the doctrine that, unless manifestly and notoriously void upon its face, the patent of the Government must be from the date of its record treated as the property of the grantee, and beyond the jurisdiction of the Department of the Interior to withhold.

(3) This being so, the question is narrowed to the one inquiry respecting the delivery of those patents withheld and canceled, and the manner in which, precedent to delivery, the effect of the unauthorized cancellation shall be removed from the patent and the record thereof in the Bureau of Land Management.

(4) These patents fall into the same place in the administration of the business of the Bureau of Land Management that they would have held had no proceedings looking to their cancellation been initiated. Those proceedings being entirely extraneous to the jurisdiction, and consequently void, have no effect upon the instrument, and do not vary the rule properly governing its tradition or transmission to the grantee. The same formalities should be observed as in ordinary cases. The right of the party to its possession must be shown, and the surrender of the usual receipts, or due accounting for their loss must be required.

§ 1862.3 Issuance of supplemental non-coal patents.

(a) The act of Congress approved April 14, 1914 (38 Stat. 335; 30 U.S.C. 82), authorized and directed the Secretary of the Interior:

> In cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as non-coal in character, to issue new or supplemental patents without such reservation.

(b) The act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent had issued, or might thereafter issue, containing a reservation of the coal in the land to the United States under the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), such land having subsequently been finally classified as non-coal character.

§ 1862.4 Patent to be withheld pending report from Forest Service.

In no claim, mineral or non-mineral, shall patent issue for land within a national forest until the Bureau of Land Management is notified by, or ascertains from, the Forest Service, that the claim will not be contested. A claim may be contested by the Forest Service at any time prior to the issuance of patent or confirmation of the entry.

§ 1862.5 Suits to vacate and annul patents.

(a) It is provided in the act of March 3, 1891 (26 Stat. 1093; 43 U.S.C. 1166), that suits by the United States to vacate and annul any patent previously issued shall only be brought within 5 years from the passage of said act, and suits to vacate and annul patents thereafter issued shall only be brought within 6 years after the date of the issue of such patents.

> In cases of fraud, the statute has been construed not to commence to run "until discovery of the fraud." Exploration Co., Limited, et al. v. United States (247 U.S. 435, 62 L. ed. 1200).

(b) By act of March 2, 1896 (29 Stat. 42; 43 U.S.C. 900–902), the time within which such suits might be brought, so far as regards patents issued under railroad or wagon-road grant, was extended so as to admit of bringing suit in such cases within 5 years from the passage of the act in cases of patents issued prior thereto, and in cases of patents issued thereafter within 6 years after the date of the issuance of the patents, with a provision protecting the titles of bona fide purchasers of such lands.

§ 1862.6 Patent to issue after 2 years from date of manager's final receipt.

(a) The decision of the Supreme Court of the United States in Thomas J. Stockley et al., appellants, v. the United States, decided January 2, 1923 (260 U.S. 532, 67 L. ed. 390) holds that after the lapse of 2 years from the date of the issuance of the "receiver's receipt"[1] upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, such entryman is, there being no pending contest or protest against the validity of such entry, entitled to patent under the proviso to section 7 of the act of March 3, 1891 (26 Stat. 1098; 43 U.S.C. 1165), regardless of whether or not the manager's final certificate has issued.

(b) The Supreme Court of the United States in Payne v. U.S. ex rel. Newton (255 U.S. 438, 65 L. ed. 720), decided that Newton was entitled to a patent on his homestead entry under the proviso to section 7 of the act of March 3, 1891, 2 years having elapsed from the date of the issuance of the receiver's final receipt upon final entry, and there being no contest or protest pending against the validity of the entry, but stated that the purpose of the satute was:

> To require that the right to a patent which for 2 years has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay, and thus to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry, as would be the case if the patent were issued in the absence of the statute.

§ 1862.7 Reservations in patents; Alaska.

All patents for lands in Alaska will reserve a right-of-way thereon for ditches or canals constructed by the authority of the United States under the act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), and all patents for lands in the Territory taken up, entered, or located subsequent to the passage of the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 301–308), will reserve to the United States a right-of-way for the construction of railroads, telegraph, and telephone lines.

In addition to the reservations mentioned, other appropriate reservations will be inserted in the patents, if required by the special laws relating to the particular entries or selections.

> CROSS REFERENCES: For mineral reservations, see Subpart 2023 of this chapter; for rights-of-way for roadways, see Subpart 2234 of this chapter.

[1] The receipts formerly issued by the receivers are now issued by the managers.

Subpart 1863—Other Title Conveyances

> AUTHORITY: The provisions of this Subpart 1863 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1863.5 Title transfer to the Government.

§ 1863.5–1 Evidence of title.

Evidence of title, when required by the regulations, must be submitted in such form and by such abstracter or company as may be satisfactory to the Bureau of Land Management. A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby.

> CROSS REFERENCE: For evidence of title in mining cases, see § 3450.3 of this chapter.

Group 2000—Land Tenure Management; General

PART 2010—ADJUDICATION PRINCIPLES AND PROCEDURES

Subpart 2011—Principles

Sec.
2011.0–3 Authority.
2011.1 Equitable adjudication.
2011.1–1 Cases subject to equitable adjudication.

Subpart 2013—Segregation of Lands

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Subpart 2011—Principles

AUTHORITY: The provisions of this Subpart 2011 issued under R.S. 2450; 43 U.S.C. 1161.

§ 2011.0–3 Authority.

By the act approved September 20, 1922 (42 Stat. 857; 43 U.S.C. 1161–1163), sections 2453 and 2454, Revised Statutes, were repealed, and sections 2450, 2451, and 2456, Revised Statutes, were amended. Sections 1161–1163 U.S.C., based on the statutes mentioned and section 403 of Reorganization Plan No. 3 of 1946 (60 Stat. 1100), read as follows:

SEC. 1161. The Secretary of the Interior, or such officer as he may designate, is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.

SEC. 1162. Every such adjudication shall be approved by the Secretary of the Interior and shall operate only to divest the United States of the title to the land embraced thereby, without prejudice to the rights of conflicting claimants.

SEC. 1163. Where patents have been already issued on entries which are approved by the Secretary of the Interior, the Secretary of the Interior, or such officer as he may designate, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such approval, to the person who made the entry, his heirs or assigns.

§ 2011.1 Equitable adjudication.

§ 2011.1–1 Cases subject to equitable adjudication.

The cases subject to equitable adjudication by the Director, Bureau of Land Management, cover the following:

(a) All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district, in which the land is situated, and special cases deemed proper by the Director, Bureau of Land Management, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith, there being no lawful adverse claim.

Subpart 2013—Segregation of Lands

AUTHORITY: The provisions of this Subpart 2013 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2013.1 Payments required to effect segregation of land; rejection of applications.

(a) The minimum fees or payments necessary to gain segregative effect for agricultural and other kinds of applications or selections shall be those which are prescribed by existing regulations in connection with the particular application or selection that may be involved: *Provided, however,* That where the laws or regulations so plainly express the full amount of fees or other payments required to be made at the time of filing, that no mistaken interpretation thereof could reasonably be made, the amounts tendered by the conflicting applicants when filing their applications may be an element for consideration in the adjudication of their respective priorities, notwithstanding a tender of the minimum fee has been made by all of them.

(b) The minimum fee, as in the case of all other fees, must be in the form prescribed by Subpart 1822 of this chapter.

(c) Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(1) Withdrawal or reservation of the lands;
(2) An allowed entry or selection of record;
(3) An irrevocable lease which grants the lessee exclusive use of the land;
(4) Classification under appropriate law;
(5) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

CROSS REFERENCE: For rule of priority in the case of mineral permits and leases, see § 2023.05.

§ 2013.2 Upon application.

§ 2013.2–1 For enlarged homestead.

No other appropriation of the land will be allowed before the application has been finally disposed of. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

CROSS REFERENCE: See Subpart 2211 for additional information on this subject.

§ 2013.2–2 For Indian allotment.

Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

CROSS REFERENCE: See Subpart 2212 for additional information on this subject.

§ 2013.2–3 For airports.

While an application for a lease of not exceeding 2,560 acres of public lands for a public aviation field under sections 1, 2, and 3 of the act of May 24, 1928 (45 Stat. 728, 729; 49 U.S.C. 211–213), will operate as a segregation of the lands described therein from the time such application is filed in the proper land office, no authority is given the Bureau to withdraw public lands for terminal airports. The Bureau may, however, withdraw such lands for beacon lights or other air navigation purposes, including emergency or intermediate landing fields between terminal airports. Such withdrawals may be made on his own motion or at the instance of the Civil Aeronautics Administration or other Federal agencies, or lessees of terminal airports, or the applicants for such leases.

CROSS REFERENCE: See Subpart 2235 for additional information on this subject.

§ 2013.2–4 For State exchange.

The filing of a valid application for exchange under the regulations of Subpart 2244 will segregate the selected public lands to the extent that any subsequently tendered application, allowance of which is discretionary, will not be accepted, will not be considered as filed, and will be returned to the applicant. Where an application is withdrawn or finally rejected in whole or in part, the segregative effect of the application on the lands covered by the recall or rejection will terminate at 10:00 a.m. on the 30th day from and after the date a notice of the withdrawal or rejection is first posted in the land office having jurisdiction over said lands.

§ 2013.2–5 For Carey Act grants.

Lands embraced in pending applications filed by States under the act of August 18, 1894 (28 Stat. 422; 43 U.S.C. 641), and described in accompanying maps and plans of irrigation; lands withdrawn under the act of March 15, 1910 (36 Stat.

237; 43 U.S.C. 643); and lands covered by approved segregations under the said act of August 18, 1894, are not subject to settlement, application, entry, or other filings while reserved, withdrawn, or segregated, and applications to file, select, or enter shall be rejected by the manager.

CROSS REFERENCE: See Subpart 2222 for additional information on this subject.

§ 2013.2–6 For stock-driveway withdrawal.

(a) Upon the receipt in the proper land office of a duly executed application, in duplicate, for the withdrawal of public lands for a stock driveway by responsible parties in interest, the lands described therein shall be segregated from disposition temporarily, pending final action thereon by the Bureau of Land Management.

(b) Pending and during such temporary segregation, applications to enter or select any affected lands may be received and suspended.

(c) Lands withdrawn for driveways for stock or in connection with water holes are not subject to entry or disposition, and applications for the acquisition of lands so withdrawn will be rejected by the manager. Applications for the exchange of such lands, which show that they are filed pursuant to a program for the improvement of stock driveways, and applications to lease or use such lands under any appropriate public land law, until such time as they may be needed for the purposes of the withdrawal, and where the proposed use will not interfere with such purpose, will receive consideration.

CROSS REFERENCE: See Subpart 2321 for additional information on this subject.

§ 2013.2–7 For withdrawal or reservation of Federal lands.

(a) The noting of the receipt of the application under §§ 2311.0–1 and 2311.1–1 to 2311.2 in the tract books or on the official plats maintained by the Land Office in which the application was properly filed or in the tract books maintained by the Washington Office of the Bureau of Land Management if there is no Land Office for the State in which the lands are located shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

(b) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The authorized officer of the Bureau of Land Management will have a notice published in the FEDERAL REGISTER specifying the date and hour that the lands so eliminated will be relieved of the segregative effect of the agency's application and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application.

(c) An amendment of an agency's application so as to include additional lands shall have as to such lands the segregative effect provided for in paragraph (a) of this section from the date of the entry of information regarding the receipt of such request on the records mentioned in paragraph (a) of this section. Such an amendment will be processed either as a part of that application or separately, as the facts may warrant.

CROSS REFERENCE: See Subpart 2311 for additional information on this subject.

§ 2013.3 Upon classification.

§ 2013.3–1 Under Small Tract Act.

Lands classified under the act of June 1, 1938, as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

CROSS REFERENCE: See Subchapter 2233 for additional information on this subject.

§ 2013.3–2 Under Taylor Grazing Act and the Recreation and Public Purposes Act.

(a) Lands in Alaska classified under the Recreation and Public Purposes Act, and lands in the States classified pursuant to the act under section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

(b) Classifications made pursuant to the act on the motion of the Government for which no application is filed within 18 months after issuance will be vacated and the land restored to its former status.

CROSS REFERENCE: See Subpart 2232 for additional information on this subject.

§ 2013.4 Lands occupied as townsites.

Public lands settled upon and occupied as a townsite are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720), subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, Revised Statutes (43 U.S.C. 717, 721–723).

§ 2013.5 Lands selected in lieu of railroad grants.

When any lands, whether surveyed or unsurveyed, have been selected under the act of July 1, 1898, by an individual claimant, no right thereto can be initiated by settlement or entry while such selection remains of record.

CROSS REFERENCE: See Subpart 2244 for additional information on this subject.

§ 2013.6 Lands occupied by Indians.

Managers will ascertain by any means in their power whether any public lands in their districts are occupied by Indians and the location of their improvements, and will suspend all applications made by others than the Indian occupants, upon lands in the possession of Indians who have made improvements of any value whatever thereon.

CROSS REFERENCE: See Subpart 2212, for additional information on this subject.

§ 2013.9 Alaska.

§ 2013.9–1 Lands under grazing leases; Act of March 4, 1927.

(a) Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands § 4131.2–7 of this chapter, and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

(b) Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Subparts 3400 and 3636 of this chapter.

(44 Stat. 1452; 43 U.S.C. 471, 471a–471c)

§ 2013.9–2 Lands subject to reindeer grazing; Act of September 1, 1937.

(a) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the non-mineral public land laws applicable to the State of Alaska.

(b) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(c) Unless otherwise withdrawn therefrom, lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Subparts 3400 and 3636 of this chapter.

(50 Stat. 902; 48 U.S.C. 250, 250a–250p)

§ 2013.9–3 Occupied lands.

Lands occupied by Indians, Aleuts, and Eskimos in good faith are not subject to entry or appropriation by others.

CROSS REFERENCE: See Subpart 2212 for additional information on this subject.

§ 2013.9–4 State selections.

Lands desired by the State under the regulations Subpart 2222 will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the appropriate land office properly describing the lands as provided in § 2222.9–3(c). Such segregation will automatically terminate unless the State publishes first notice as provided by § 2222.9–4(g) within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

CROSS REFERENCE: See Subpart 2222 for additional information on this subject.

§ 2013.9–5 Alaska Public Sales Act.

(a) Subject to valid prior rights, the filing of an application in conformity with the regulations in Subpart 2241 will segregate the land applied for from application, entry, or settlement under any public-land laws or from mining locations except as provided in § 2241.5–2 pending classification of the land under the act.

(b) Subject to valid prior rights, the authorized officer may, at any time, on his own motion, effect a segregation of land, pending its classification as suitable for disposal under the act by filing with the manager of the land office a notice specifying each tract of land under consideration. The notice shall be effective to segregate the land from further application, entry or settlement under any public-land law, or from mining locations except as provided in § 2241.5–2. The segregation notice shall be effective for not more than six months from date of filing of the notice in the land office, but the segregation may be extended for not more than an additional six months by the authorized officer, by filing a similar notice as to any or all of such tracts.

(c) An application or a segregation notice shall not prevent the filing of other applications under any public-land law without the initiation of any rights thereunder, pending classification of the land. Upon determination, pursuant to an application or notice, that the land is not suitable for disposal under the act or upon expiration of the segregation period or an extension thereof without classification, the land shall be subject to the public-land laws and pending applications thereunder.

CROSS REFERENCE: See Subpart 2241 for additional information on this subject.

§ 2013.9–6 Application for native allotment.

The filing of an acceptable application for allotment will segregate the lands to the extent that conflicting applications for such lands will be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned occupancy of the land.

CROSS REFERENCE: See Subpart 2212 for additional information on this subject.

PART 2020—SPECIAL RESOURCE VALUES

Subpart 2022—Power

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Subpart 2025—Improvements

2025.1 Reservation of rights-of-way for federal irrigation purposes under the Act of December 5, 1924.

Subpart 2022—Power

AUTHORITY: The provisions of this Subpart 2022 issued under R.S. 2478; 43 U.S.C. 1201.

CROSS REFERENCES: For applications and entries, Alaska, see § 1824.9 of this chapter. For rights-of-way for power projects and for power transmission lines, see Subpart 2234. For regulations of the Federal Power Commission, see 18 CFR Chapter I. For rights-of-way over Indian lands; power projects; see Indians 25 CFR 161.27.

§ 2022.0–3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended, provides that any lands of the United States included in an application for power development, under said Act, shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States, until otherwise directed by the Federal Power Commission or by Congress. It also provides that whenever the Commission shall determine that the value of any lands withdrawn or classified for power purposes will not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection under such restrictions as the Commission may determine, and subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any or all of such lands for power purposes. Before the lands are declared open to location, entry or selection, the Secretary of the Interior must give notice of his intention to make such declaration, to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of such notice to file under any applicable law or regulation, an application for the reservation to the State, or any political

subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways.

(b) The act of August 11, 1955 (69 Stat. 681; 30 U.S.C. 621) opened lands then, theretofore or thereafter withdrawn or classified for power purposes, with certain specified exceptions, to mineral location and development under certain conditions.

§ 2022.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands are considered as withdrawn or classified for power purposes for the purposes of section 24 of the Federal Power Act: Lands withdrawn for powersite reserves under the act of June 25, 1910 (36 Stat. 847) as amended by the act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 141–143); lands included in an application for power development under the Federal Power Act; lands classified for powersite purposes under the act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31); lands designated as valuable for power purposes under the acts of June 20, 1910 (36 Stat. 557, 564, 575), June 9, 1916 (39 Stat. 218, 219), and February 26, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959); and lands within transmission-line permits or approved right-of-way under said act of 1901 or the act of March 4, 1911 (36 Stat. 1253; 16 U.S.C. 5, 420, 523; 43 U.S.C. 961).

§ 2022.2 General determination of availability of land.

(a) On April 17, 1922, the Federal Power Commission made a general determination "that where lands of the United States have heretofore been, or hereafter may be, reserved or classified as powersites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Water Power Act."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands restored under section 24 of the Federal Power Act, are contained in Group 3400 of this chapter.

§ 2022.3 Petitions for restoration.

(a) Petitions for restoration of lands withdrawn or classified for power purposes, under the provisions of section 24 of the Federal Power Act, must be filed, in duplicate, in the proper land office, or for lands in States for which there are no land offices, with the Bureau of Land Management, Washington 25, D.C., except that petitions for lands in North or South Dakota must be filed in the land office at Billings, Montana; for lands in Kansas or Nebraska in the land office at Cheyenne, Wyoming; and for lands for Oklahoma in the land office at Santa Fe, New Mexico. No particular form of petition is required, but it must be typewritten or in legible handwriting. Each petition must be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon a petition for restoration will not give the petitioner any preference right or right to preferential treatment if or when the lands are finally restored.

Subpart 2023—Minerals (Nonmineral Entries on Mineral Lands)

AUTHORITY: The provisions of this Subpart 2023 issued under R.S. 2478; sec. 32, 41 Stat. 450; 43 U.S.C. 1201, 30 U.S.C. 189. Additional authority is cited following section affected.

§ 2023.0–3 Authority.

(a) Section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186) and the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124) grant the Secretary of the Interior complete discretion to determine whether the surface of public lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leasable mineral, or lying within the geologic structure of a field, should be disposed of. Accordingly, where a nonmineral application is filed, in the continental United States,[1] for any of such described lands, the nonmineral application may be allowed only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. Appeals from any decision of the Director, Bureau of Land Management, or other officer, may be taken by any affected party in accordance with Parts 1840 and 1850 of this chapter.

(b) Sections 2023.0–3 to 2023.0–7 apply to all public land States, including, though not limited to, those States which are specifically excepted by statute from the operation of the mining laws, but which are covered by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) (48 L.D. 629, Apr. 8, 1922). §§ 2023.0–3 to 2023.0–7 do not apply, however, to public domain lands in Alaska, which are governed by § 2023.5.

§ 2023.0–5 Definitions.

As used in §§ 2023.0–3 to 2023.0–7 inclusive, a mineral claim is "prior" where an application for a mineral permit or lease has been filed before either the filing of a complete nonmineral application for part or all of the same land, or before the classification of that land for the purposes requested by that nonmineral applicant: *Provided,* That the nonmineral application is not either for:

(a) A State exchange under section 8 of the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315g), as amended, filed prior to such mineral claim; or

(b) A reclamation homestead under the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 372 et seq.) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 2023.0–6 Notations required.

(a) *On notice of allowance.* Whenever the mineral claim is "prior", the following notation will be made in the notice of allowance of the nonmineral application, as well as on the original copy of that nonmineral application:

This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

(b) *On final certificate.* (1) Whereever a nonmineral application, which is affected by the notation described in paragraph (a) of this section, proceeds to issuance of final certificate and patent, and at the time of such issuance there is outstanding a mineral lease, permit, or application therefor, based on a "prior", mineral claim, such final certificate and patent will indicate that they are subject to the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124).

(2) Such final certificate and patent will indicate that they are also subject to the provisions and limitations of section 29, act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186), if, when the final certificate or patent issues, there is outstanding a mineral lease or permit based on a "prior" mineral claim.

§ 2023.0–7 Compensation for damages.

In any case where there is no "prior" mineral claim, any person obtaining authority to prospect for, mine or remove the reserved mineral deposits will be liable to the entryman, selector or patentee of the surface for any damages to crops or improvements which may result from his prospecting or mining operations on the land.

§ 2023.1 Surface rights of nonmineral entrymen.

§ 2023.1–1 Act of March 3, 1909.

(a) The act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) protects persons who, in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein. It applies alike to locations, selections, and entries made prior to its passage and those made subsequently thereto.

(b) The act also provides for the disposal, under the existing coal land laws, of the coal contained in such lands and gives the patentees of such lands the right to mine coal for domestic purposes prior to disposal thereof by the United States.

§ 2023.1–2 Election to take patent with reservation to United States of the coal deposits.

All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as provided for in § 2023.1–3 (a), and (b).

§ 2023.1–3 Procedures.

(a) *Where final proof has been submitted.* (1) Managers will promptly advise each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the act of March 3, 1909.

(2) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(3) In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless it shall be shown that the land is chiefly valuable for coal.

(4) The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

(b) *When final proof has been submitted.* Where satisfactory final proof has been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

§ 2023.1–4 Disposal of the coal deposits.

Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be leased or otherwise disposed of, as provided for by the act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended.

§ 2023.2 Agricultural entries on coal lands.

§ 2023.2–1 Acts of June 22, 1910 and April 30, 1912.

(a) Section 1 of the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83), provides that from and after its passage, the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert land law, selection under section 4 of the act approved August 18, 1894, known as the Carey Act (28 Stat. 422; 43 U.S.C. 641, and to withdrawal under the act approved June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the act approved February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), entitled "An act to provide for an enlarged homestead." The act of February 19, 1909, was amended by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(b) In the proviso to section 1 (36 Stat. 583; 30 U.S.C. 83) it is enacted that those who had initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands wtihdrawn or classified as coal lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

(c) Section 2 of the act (36 Stat. 584; 30 U.S.C. 84) provides that any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 4 of the act of August 18, 1894, known as the Carey Act, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

(d) The act of April 30, 1912 (37 Stat. 105; 30 U.S.C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the act of June 22, 1910.

CROSS REFERENCE: See Subparts 2211, 2222, and 2226 for additional information on this subject.

(e) The act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85) was not designed to operate as an implied repeal of any provision of the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81). There is no inconsistency between the two acts, and both of them may have harmonious operation within their proper spheres. The earlier law provides a remedy in those cases in which entries, locations, and selections have been or may be made for lands which, subsequently to entry, location, or selection, have been, or may be, claimed, classified, or reported as being valuable for coal, while the later act permits certain dispositions to be made of lands valuable for coal, notwithstanding that they may have been previously withdrawn, or classified as such. The proviso to section 1 of the later act also affords relief to those persons who, prior to June 22, 1910, in good faith made entries, locations, or selections of lands which, at the date of such entries, locations, or selections, had been withdrawn or classified, as valuable for coal.

§ 2023.2–2 Lands on which entries may be made.

(a) The act of June 22, 1910 applies to unreserved public lands in the United States, exclusive of the State of Alaska, which have been withdrawn as coal lands and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.

(b) The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the act of June 22, 1910.

§ 2023.2–3 Requirements to complete homestead entries.

The act of February 19, 1909, as amended by the act of June 6, 1912 (subject to which, as to residence and cultivation, such homestead entries must be made), provides that "no entry made under this act shall be commuted" (35 Stat. 639; 43 U.S.C. 218). This, then, requires a residence for the full period of 3 years to entitle the homesteader to patent thereunder. The enlarged homestead act, as amended, also provided that in addition to the proofs and affidavits required under section 2291 of the Revised Statutes (43 U.S.C. 164) the entryman shall prove by two credible witnesses that at least one-sixteenth of

the area embraced in his entry was continuously cultivated to agricultural crops, other than native grasses, beginning with the second year of the entry, and that at least one-eighth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

§ 2023.2–4 Procedures.

(a) *Applications.* (1) The last proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U.S.C. 85) provides that nothing in the act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(2) Entries and selections under the provisions of the act of June 22, 1910, must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to the manager, the following:

Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

(b) *Hearing.* Except in the case of those who present applications under section 2 of the act (36 Stat. 584; 30 U.S.C. 84), the manager will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. If upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be allowed. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the act.

§ 2023.2–5 Patent with reservation of coal deposits; disposal of coal deposits.

(a) By section 3 of the act of June 22, 1910, it is provided that upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Said section 3 also provides that any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages.

(b) There will be incorporated in patents issued to nonmineral claimants under this act the following:

Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the act of June 22, 1910 (36 Stat. 583).

§ 2023.2–6 Prospecting for reserved coal deposits.

As a condition precedent to the exercise of the right mentioned in the act of June 22, 1910, to prospect for coal on public land which has been entered or patented with a reservation of the coal deposits as provided by that act, the person desiring to so prospect must file a bond in the sum of $1,500, apply for and obtain a coal prospecting permit, and otherwise comply with the regulations relating to coal prospecting permits contained in Part 3130 of this chapter.

§ 2023.3 Homestead entry of coal lands in Alabama.

§ 2023.3–1 Act of April 23, 1912.

The act of April 23, 1912 (37 Stat. 90; 30 U.S.C. 77) makes unreserved public lands containing coal, in Alabama, which were withheld from homestead entry under the act of March 3, 1883 (22 Stat. 487; 30 U.S.C. 171), subject to homestead entry with a reservation of the coal deposits to the United States, as provided by the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85).

§ 2023.3–2 Lands to which applicable.

The lands referred to in the act of April 23, 1912, include all tracts which were prior to March 3, 1883, reported as containing valuable coal, and which were not under the provisions of the act of March 27, 1906 (34 Stat. 88; 30 U.S.C. 172), classified as agricultural in character.

§ 2023.3–3 Procedures.

(a) Section 2023.2 under the act of June 22, 1910, will govern proceedings with reference to these lands so far as applicable.

(b) Prior to execution of a homestead application it must bear across its face the notation provided by § 2023.2–4(a)(2). This notation may not be placed upon the application after its execution without applicant's consent. In the absence of the notation the application will be treated as incomplete, and the applicant will be allowed the usual time to perfect same.

§ 2023.3–4 Contest.

The second proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U.S.C. 85), has no application to the Alabama lands, and claimants are not, therefore, entitled to contest the classification of the land and disprove its coal character.

§ 2023.4 Agriculture entry of lands withdrawn, classified or valuable for minerals.

§ 2023.4–1 Acts of July 17, 1914 and March 4, 1933.

(a) Section 1 of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121) authorizes the appropriation, location, selection, entry or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made.

(b) The term "person" used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L.D. 245), or other corporation, or an association when duly qualified.

(c) Under the proviso in section 2 of the act (38 Stat. 509; 30 U.S.C. 122) applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservations; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(d) Under the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), lands

withdrawn, classified, or reported as valuable for sodium and/or sulphur are subject to entry, filing, or selection, if otherwise available, and subject to the reservations, provisions, limitations and conditions of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), sulphur lands being limited to the States of Louisiana and New Mexico, pursuant to the act of July 16, 1932 (47 Stat. 701; 30 U.S.C. 271, 276).

(Interprets or applies sec. 1, 36 Stat. 583, sec. 1, 38 Stat. 509, as amended; 138; 30 U.S.C. 83, 121)

§ 2023.4–2 Lands to which applicable.

The act of July 17, 1914 is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the State of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act, July 17, 1914, will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.

§ 2023.4–3 Procedures.

(a) *General.* The act of July 17, 1914 in many respects resembles that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts as set forth in §§ 2023.1 to 2023.2 may be followed, so far as applicable, in matters of practice and procedure.

(b) *Notations on applications and in orders of withdrawal.* (1) All applications to locate, select, enter, or purchase lands under the act of July 17, 1914, before being accepted and filed by the manager, must have written, stamped, or printed upon their face the following:

Application made in accordance with, and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(2) Orders of withdrawal under the Reclamation Act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914.

(c) *Notice to entryman; action by entryman.* (1) Where the Geological Survey reports that land embraced in a nonmineral entry or claim on which final proof has not been submitted or which has not been perfected is in an area in which valuable deposits of oil and gas may occur because of the absence of reliable evidence that the land is affected by geological structure unfavorable to oil and gas accumulation, the entryman or claimant will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in event reclassification is denied, or to appeal. He must be advised that, if a hearing is ordered, the burden of proof will be upon him, and also that, if he shall fail to take one of the actions indicated, his entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States.

(2) In a case where acceptable final proof has been submitted, or a claim has been perfected, and the Geological Survey thereafter makes report, as in the above or similar form, such report will not be relied upon as basis for a mineral reservation unless the Government is prepared to assume the burden of proving, prima facie, that the land was known to be of mineral character, at the date of acceptable final proof or when the claim was completed, according to the established criteria for determining mineral from nonmineral lands, among which may be those recognized by the Supreme Court in the case of United States v. Southern Pacific Company et al. (251 U.S. 1, 64 L. ed. 97). If the Government is thus prepared to assume such burden of proof, the Bureau of Land Management will notify the entryman of the mineral classification and that a hearing will be ordered if he manifests disagreement with the classification within a reasonable period. The entryman or claimant will be advised that in the event hearing is had, the burden of proof will be upon the Government; also that, if he shall fail to make answer within the time allowed, the entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil or gas to the United States.

CROSS REFERENCE: For Geological Survey, classification of public coal lands, see 30 CFR, Part 201.

(d) *Applications to disprove classification of land; hearing thereon.* (1) (i) The proviso to section 2 of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

(ii) Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act (38 Stat. 509; 30 U.S.C. 121), and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by the manager and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

(iii) If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be allowed.

(iv) If the application be denied the applicant may, within 30 days from notice of such denial, apply to the land office for a hearing to disprove the classification. When a hearing is applied for, the manager will proceed therewith under Parts 1840 and 1850 of this chapter. If the applicant fails to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

(v) The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(2) (i) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

(ii) Claimants to whom this provision is applicable may, therefore, file in the proper land office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification. If the application be denied, the claimant will be allowed 30 days from notice of such denial within which to make application to the land office for a hearing to establish the nonmineral character of the land. When a hearing is applied for the manager will proceed therewith under Parts 1840 and 1850 of this chapter.

(e) *Burden of proof.* (1) Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123) as supplemented by the act of March 4,

1933 (47 Stat. 1570; 30 U.S.C. 124), the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

(2) A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. (See Charles W. Pelham (39 L.D. 201).)

§ 2023.4–4 Patents.

(a) *Patent with reservation.* Section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123), is both retrospective and prospective, and under it any person who prior to the act, had applied or who after the passage of the act, shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), and the disposition of such cases will follow the practice under that act insofar as the same is applicable.

(b) *Application for patent.* Nonmineral claimants who are or may be affected by withdrawals or classifications made or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall be entitled to the patent authorized to be issued by section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123) upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.

(c) *Reservations in patents.* There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat. 509).

§ 2023.4–5 Disposition of reserved deposits; protection of surface claimant.

The act of July 17, 1914, provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Provisions are made in the act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits.

§ 2023.5 Entries on coal, oil, and gas lands in Alaska.

§ 2023.5–1 Acts of March 8, 1922 and May 17, 1906 as amended.

(a) The act of March 8, 1922 (42 Stat. 415), as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 376, 377), referred to in §§ 66.1 to 66.5 of this part as "the act of 1922," provides that (1) in Alaska, homestead, including soldiers' additional homestead, homesite, headquarters site, and trade and manufacturing site claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits or that may be valuable for the coal, oil, or gas contained therein, and which are not otherwise reserved or withdrawn; (2) such claims initiated in good faith may be perfected under the appropriate public land laws and, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same; and (3) should it be discovered at any time prior to the issuance of a final certificate on any claim initiated for unreserved lands in Alaska that the lands are coal, oil, or gas in character, the patent issued on such entry shall contain the reservation referred to in subparagraph (2) of this paragraph.

(b) The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), permits, subject to the provisions of the act of 1922, homestead allotments to Indians, Aleuts, and Eskimos of vacant, unappropriated, and unreserved lands in Alaska that may be valuable for coal, oil, or gas deposits and the act of August 17, 1961 (75 Stat. 384), permits the Secretary of the Interior to sell under the provisions of section 2455 of the Revised Statutes (43 U.S.C. 1171), as amended, lands in Alaska known to contain workable coal, oil, or gas deposits, or that may be valuable for the coal, oil, or gas contained therein, and which are otherwise subject to sale under said section 2455, as amended, upon the condition that the patent issued to the purchaser thereof shall contain the reservation required by section 2 of the act of 1922. (See Subpart 2243.)

(c) Section 2 of the act of 1922 provides (1) the coal, oil, and gas deposits reserved under the act shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal; (2) any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times (after the issuance of, and pursuant to, a lease or permit therefor) to enter upon the lands as provided by the act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting; (3) any person who has acquired from the United States the coal, oil or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages.

(d) The act of 1922 extends to Alaska the principles of the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), and July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), which, among other things, govern agricultural entries on coal, oil, or gas lands in States other than Alaska. The general instructions under these acts relating to the reservation of coal, oil, or gas to the United States as set forth in this subpart will, therefore, be followed in matters of practice and procedure.

§ 2023.5–2 Rights of prior mineral permittees or lessees.

If prior to the date of the initiation of a claim that is subject to the provisions of the act of 1922, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for or offer of such a lease or permit, the land will be subject to the right of such prior mineral permittee or lessee, or of such prior applicant for or offeror of a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the entryman, allottee, or patentee for crop and improvement damages resulting from such mineral activity.

eral claimants who are or may be al-

§ 2023.5–3 Obligations of subsequent mineral permittees or lessees.

(a) Any coal permit applicant or noncompetitive oil and gas lease offeror whose application or offer was filed subsequent to the date of the initiation of a claim that is subject to the provisions of the act of 1922 must file with the appropriate Land Office Manager a waiver from, or a consent of, the claimant or a bond or undertaking on forms approved by the Director, for coal applicants and for oil and gas offerors for the payment of all damages to the crops and improvements on the lands caused by the prospecting.

(b) There must be filed with the bond or undertaking required by the preceding paragraph, evidence of service of a copy thereof upon the claimant. The bond must be executed by the prospector as principal and by a corporate surety which has been approved as required by section 1 of the act of July 30, 1947 (61 Stat. 646; 6 U.S.C. 1–15), in the sum of $1,000. Where surety bonds are tendered with individuals as sureties, they must be executed by not less than two qualified individual sureties. Each surety must execute a statement showing that he is worth $2,000 in real property not exempt from execution, over and above his just debts and liabilities and that he is either a resident of the same State or Territory and the United States Judicial District as the principal on the bond, or of the United States Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States Attorney, a United States Commissioner, or a United States Postmaster, as to the identity, signature, and financial competency of the sureties. The statement of justification required to be furnished by the sureties, and the certificate of competency must be on a form approved by the Director.

(c) Bonds or undertakings executed pursuant to the provisions of § 2023.5–1 (c) (3) must not be filed with the Bureau of Land Management. Such bonds or undertakings are to be arranged for as specified in that subparagraph.

§ 2023.5–4 Use of coal by the nonmineral claimant.

A claimant under the act of 1922 may, at any time prior to the disposal by the United States of the coal deposits on his claim, make use of them for his domestic purposes and this may be done without the filing of any application therefor. This privilege does not, however, authorize the mining of the coal deposits for the purpose of barter or sale.

§ 2023.6 Disposition of minerals reserved to the United States Government.

§ 2023.6–1 Act of December 29, 1916.

(a) *Reservation of rights.* (1) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(2) There will be incorporated in patents issued on homestead entries under this act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

(b) *Mineral deposits subject to existing laws.* The coal and other mineral deposits in the lands entered or patented under the act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry, unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

CROSS REFERENCE: For mineral land regulations, generally, see Group 3000 of this chapter.

(c) *Prospecting.* Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting.

(d) *Prior approval; payment or bonding.* (1) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond, on a form approved by the director, must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6–13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the manager of the land office of the district wherein the land is situate, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(2) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land no objections are made by such entryman or owner of the land and filed with the manager against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said manager, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the manager, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the manager be not timely filed by the person proffering the bond, the manager will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the manager ad-

verse to the contentions of said homestead entryman or owners of the lands, said manager may, if all else be regular, approve the bond.

(e) *Mineral applications.* Mineral applications for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to the manager, the following notation:

Patents shall contain appropriate notations declaraing same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

Subpart 2024—Shore Space

AUTHORITY: The provisions of this Subpart 2024 issued under R.S. 2478; 43 U.S.C. 1201, Interpret or apply secs. 4, 5, 69 Stat. 444; 48 U.S.C. 462 note.

§ 2024.0–3 Authority.

Section 1 of the act of May 14, 1898 (30 Stat. 409) as amended by the acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U.S.C. 371) provides that no entry shall be allowed extending more than 160 rods along the shore of any navigable water. Section 10 of the act of May 14, 1898, as amended by the acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 2024.0–5 Definitions.

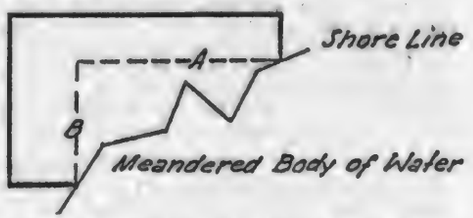
The term "navigable waters" is defined in section 2 of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411), "to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark".

§ 2024.1 Methods of measuring; restrictions.

(a) In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

(b) The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

(c) The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B", whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 2024.2 Waiver of 160-rod limitation.

(a) The act of June 5, 1920 (41 Stat. 1059; 48 U.S.C. 372) provides that the Secretary of the Interior in his discretion, may upon application to enter or otherwise, waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing, and wharf purposes. The act does not authorize the waiver of the 80-rod restriction, mentioned in § 2024.0–3.

(b) Except as to trade and manufacturing sites, and home and headquarters sites, any applications to enter and notices of settlement which cover lands extending more than 160 rods along the shore of any navigable water will be considered as a petition for waiver of the 160-rod limitation mentioned in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the limitation.

Subpart 2025—Improvements

AUTHORITY: The provisions of this Subpart 2025 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2025.1 Reservation of rights-of-way for Federal irrigation purposes under the Act of December 5, 1924.

Section 4, subsection P, of the act of December 5, 1924 (43 Stat. 704; 43 U.S.C. 417), provides that where, in the opinion of the Secretary, a right-of-way over public land is required in connection with a reclamation project, the Secretary may reserve the same to the United States by filing in the appropriate land office copies of an instrument giving a description of the right-of-way and notice that the same is reserved to the United States for Federal irrigation purposes under this section, in which event entry for such land and the patent issued therefor shall be subject to the right-of-way so described in such instrument; and reference to each such instrument shall be made in the appropriate tract books and also in the patent.

PART 2030—SPECIAL CONSIDERATIONS

Subpart 2031—Alaska

Sec.
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2031.2 Governing laws effective upon the admission of Alaska to the Union.

Subpart 2033—Veterans

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2033.1–4 Cultivation and other requirements under the homestead and the Alaska homesite laws.
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2033.2–5 Homesteads.
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2033.2–7 Mining claims.
2033.2–8 Installment payments for land, under homestead and other entries.
2033.2–9 Leases, permits, licenses, and claims.

Subpart 2031—Alaska

AUTHORITY: The provisions of this Subpart 2031 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2031.1 Governing laws prior to the admission of Alaska to the Union.

(a) The act of May 17, 1884 (23 Stat. 24), providing for a civil government for Alaska, in section 8, extended to Alaska "the laws of the United States relating to mining claims, and the rights incident thereto," but provided that "nothing contained in this act shall be construed to put in force in said district the general land laws of the United States." Similar provision is contained in sections 26 and 27 of the act of June 6, 1900 (31 Stat. 329, 330; 48 U.S.C. 381, 356), which act also made provision for a civil government for Alaska.

(b) However, in section 3 of the act of August 24, 1912 (37 Stat. 512; 48 U.S.C. 23), it was provided that "the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said State as elsewhere in the United States."

(c) In an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), the Attorney General had occasion to consider the effect of the act of August 24, 1912, in respect to extending certain public-land statutes to Alaska, and, in this connection, he stated: "The express exception of the public land laws, found in the earlier organic acts, is here omitted; all the laws of the United States are to operate in Alaska save only such as may be locally inapplicable."

(d) It follows, therefore, that whether or not any particular public land statute is applicable in the State depends on whether or not it may operate therein consistently with special legislation and with local conditions.

§ 2031.2 Governing laws effective upon the admission of Alaska to the Union.

(a) Alaska was admitted to the Union January 3, 1959, by Presidential Proclamation No. 3269, January 5, 1959, 24 F.R. 81, 73 Stat. c16. Section 8(d) of the Alaska Statehood Act (Act of July 7, 1958, Public Law 85–508; 72 Stat. 339), provides as follows: "Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act."

(b) Section 8(d) was intended (1) to provide for the continuation of the Territorial laws until the legislature of the State of Alaska could enact a body of laws for its government, (2) to make applicable to the new State the Federal laws applicable elsewhere in the United States, and (3) to provide for the continuation of certain Federal laws, other than Territorial laws, which were applicable to Alaska at the time of Statehood.

(c) "Territorial laws" continuing in full force and effect by virtue of this section are of two types:

(1) Laws enacted by the Territorial Legislature of Alaska.

(2) Laws or parts thereof enacted by the Congress, the validty of which is dependent solely upon the authority of the Congress to provide for the Government of Alaska as a Territory prior to the admission of the State of Alaska into the Union. This second type of Territorial law may be said to include those laws or parts thereof enacted by Congress for the internal operation of the government of Alaska, which, had Alaska then been a State, the Congress would not have had the power to control. To express it another way, this type of Territorial law refers to those Federal laws, the continued operation and effect of which woud be inconsistent with the sovereignty of the State and would, unless continued by the new State, cease to have any force and effect after the admission of the State to the Union.

(d) These Territorial laws are continued in effect except as modified by the Statehood Act, the constitution of the State, "or as thereafter modified or changed by the legislature of the State."

(e) The term "laws of the United States" includes all general laws that apply throughout the other States. In addition, it includes all laws or parts of laws enacted by the Congress which, at the time of admission of the State, applied to or within the Territory of Alaska, provided such laws are not "Territorial laws" as defined in section 8(d) and are not in conflict with any other provision of the Statehood Act. "Laws of the United States" may be categorized as follows:

(1) Laws generally applicable to the United States but which were not applicable to Alaska prior to Statehood.

(2) Laws equally applicable to the United States and its Territories and possessions (including Alaska) or to the Territory of Alaska specifically.

(3) Laws applicable to the United States and its Territories and possessions generally, and which accord the Territories and possessions more or less favorable treatment than is accorded the several States.

GROSS REFERENCE: See Subparts 2023 and 1850 of this chapter for additional information on this subject.

Subpart 2033—Veterans

AUTHORITY: The provisions of this Subpart 2033 issued under sec. 6, 45 Stat. 1061, as amended, sec. 5, 58 Stat. 748, as amended, 43 U.S.C. 617e, 283, except as noted following sections affected.

§ 2033.0–3 Authority.

(a) *Act of September 27, 1944.* The act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279–284), as amended, referred to in this part as the "1944 Act", grants to veterans of World War II and of the Korean Conflict certain benefits in connection with the public lands. These rights are in addition to the benefits conferred on persons in the military service by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178; 50 U.S.C., App. 560–572), as amended, and the regulations thereunder in this part, relating to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service.

(b) *Other war statutes.* Other statutes have granted benefits under the homestead laws (43 U.S.C. 164, 169, 218) to veterans who served in earlier wars. The veterans benefited, referred to in this part as "veterans of other wars" and the statutes conferring the benefits are as follows: Veterans of certain Indian Wars, act of April 7, 1930 (46 Stat. 144; 43 U.S.C. 243); veterans of the Civil War, Sec. 2305, Revised Statutes (43 U.S.C. 272); veterans of the war with Spain and of the suppression of the Philippine Insurrection, acts of June 16, 1898 (30 Stat. 473; 43 U.S.C. 240) and of March 1, 1901 (31 Stat. 847; 43 U.S.C. 271, 272); and veterans of the Mexican border operations and of World War I, act of February 25, 1919 (40 Stat. 1161; 43 U.S.C. 272a,

278), as amended by the act of April 6, 1922 (42 Stat. 491; 43 U.S.C. 233, 272, 273), and Public Resolution 79 of December 28, 1922 (42 Stat. 1067; 43 U.S.C. 186, 272a).

(c) *Boulder Canyon Project Act.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063), as amended by the act of March 6, 1946 (60 Stat. 36, 43 U.S.C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, World War I, the war with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

(d) *Act of October 17, 1940.* (1) The act of October 17, 1940 (54 Stat. 1178), known as the "Soldiers' and Sailors' Civil Relief Act of 1940," extends relief and benefits to persons in the military service, including those set forth in Subpart 2033. Section 604 of the act provides that the act shall remain in force until May 15, 1945, but that should the United States be then engaged in a war, the act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for 6 months thereafter. It also provides that wherever under any section or provision of the act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date therein fixed for the termination of the act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction.

(2) By section 14 of the act of June 24, 1948 (62 Stat. 623), as amended (50 U.S.C. App. Sup. 464) all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 were continued in effect until "repealed or otherwise terminated by subsequent act of the Congress."

(3) Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which it engages while the Soldiers' and Sailors' Civil Relief Act of 1940 is in force, will be entitled to the relief and benefits afforded thereby if such service is similar to military service as defined in such act and in § 2033.0–5 and if they are honorably discharged and resume United States citizenship, or die in the service of the allied forces, or as a result of such service (Sec. 512, 54 Stat. 1190).

(e) *Statutes superseded; statute repealed.* (1) Section 605 of the Soldiers' and Sailors' Civil Relief Act of 1940 makes the provisions of section 4 of the joint resolution approved August 27, 1940 (54 Stat. 860), and the provisions of section 13 of the Selective Training and Service Act of 1940, inapplicable to any military service performed after October 17, 1940. Paragraph 3 of section 503 of the act first mentioned repeals the act of July 28, 1917 (40 Stat 248).

(2) (i) Section 4 of Public Resolution No. 96 of August 27, 1940, extended the benefits of certain provisions of the Soldiers' and Sailors' Civil Relief Act of March 8, 1918 (40 Stat. 440–448), including section 501, to all National Guard, Reserve and Retired Personnel, ordered into the military service under authority of its provisions, so long as such personnel are in such service and for 60 days thereafter.

Section 13 of the Selective Training and Service Act of 1940 extended the same benefits to persons who are inducted into the land or naval forces under the authority of its provisions and to all members of any reserve component of such forces then or thereafter on active duty for a period of more than one month.

(ii) The act of July 28, 1917 (40 Stat. 248), extended certain relief to homestead entrymen or settlers who enter the military or naval service of the United States in time of war. The Soldiers' and Sailors' Civil Relief Act of 1940 extends substantially the same relief to those who are entitled to its benefits.

§ 2033.0–5 Definitions.

The following definitions, contained in section 101 of the Soldiers' and Sailors' Civil Relief Act of 1940, are adopted as definitions for the purpose of § 2033.2:

(a) The term "persons in the military service" shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

(b) The term "military service" shall signify Federal service on active duty with any branch of service above referred to as well as training or education under the supervision of the United States preliminary to induction into the military service and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(c) The term "period of military service" and equivalent terms, shall include the time between the following dates: For persons in the active service on October 17, 1940, it shall begin with that date; for persons entering the active service after the date mentioned, it shall begin with the date of entering the active service. It shall terminate with the date of discharge from active service or death while in the service, but in no case later than the date when the Soldiers' and Sailors' Civil Relief Act of 1940 ceases to be in force.

§ 2033.1 Act of September 27, 1944; benefits to veterans.

§ 2033.1–1 Persons entitled to veterans' benefits.

(a) A veteran is entitled to benefits under the 1944 act if he has served in the military or naval forces of the United States including the Coast Guard, on or after September 16, 1940, and prior to the termination of the Korean Conflict, referred to in this part as the "statutory period" of the 1944 act, and has been honorably discharged from such forces. The veteran is considered to have been honorably discharged for the purposes of the 1944 act if separated from the service by means of an honorable discharge, by the acceptance of resignation, or by a discharge under honorable conditions. A release from active duty is acceptable instead of a discharge if the release from active duty to an inactive status was under honorable conditions, whether or not in a reserve component or retirement, and whether or not the veteran thereafter resumes active military duty. In addition, the veteran must have:

(1) Served at least 90 days during the statutory period, or

(2) Been discharged on account of wounds received or disability incurred during the statutory period in line of duty, or

(3) After regular discharge, been furnished hospitalization or awarded compensation by the Government on account of wounds received or disability incurred during the statutory period.

A veteran, under 21 years of age, who is otherwise entitled to benefits under the 1944 act, may not be disqualified from making homestead entry or from any other benefits of the 1944 act merely because of age.

(b) A "veteran of other wars" is entitled to benefits if he was honorably discharged and served:

(1) With the United States Army or Navy or with a unit of the Federalized National Guard mustered into the United States service or with a Red Cross unit assigned to an Army or Navy unit, if the veteran served between April 15, 1861, and August 20, 1866, and remained loyal to the Government; or if he served between April 21, 1898, and July 15, 1903; or between May 9, 1916, and March 3, 1921; or with the Allied armies between July 28, 1914, and March 3, 1921, and thereafter resumed his United States citizenship; and if the veteran served for at least 90 days during any one of those periods, or was wounded or disabled in line of duty while in such service, or was awarded compensation by the United States for wounds or disability resulting from such service; or

(2) With a Federal, State, or Territorial military organization in any Indian War, campaign, or in a zone of active Indian hostilities between January 1, 1817, and December 31, 1898, if the veteran served for at least 30 days.

(c) The following persons may exercise the rights of a veteran under the regulations of this part, subject to compliance with other applicable regulations:

(1) The wife or husband of a veteran entitled to benefits under the 1944 act,

other transaction.

if the veteran gives written consent, such benefits being in addition to any to which the spouse may individually be entitled under the 1944 act as a qualified veteran.

(2) The surviving wife or husband, or the surviving minor children if the spouse dies or remarries, of a veteran entitled to benefits under the 1944 act or of a person who died as the result of wounds received or disability incurred in line of duty while serving with the military or naval forces during the statutory period of the 1944 act.

(3) The heirs or devisees of a veteran entitled to the benefits of the 1944 act with respect to a homestead settlement or entry made by the veteran who died before perfecting title to the claim, without leaving a surviving spouse or minor children.

(4) The unmarried widow of a "veteran of other wars" entitled to benefits under the regulations of this part who died prior to making homestead entry, or the widow of such a veteran who died after making homestead settlement or entry or filing a declaratory statement but prior to perfecting his claim.

(5) The minor orphan children of a "veteran of other wars" entitled to benefits under the regulations of this part if:

(i) The veteran died prior to making homestead entry or died while actually engaged in the war with Spain, the Philippine Insurrection, the Mexican border operation, or World War I after settling on public lands of the United States, and if the widow died or remarried; or

(ii) The veteran made homestead entry or filed a declaratory statement or his widow made homestead entry but died prior to perfecting the claim, leaving a minor child or minor children as his or her only heirs.

(6) The heirs or devisees of any "veteran of other wars" entitled to benefits under the regulations of this part who made homestead settlement or entry, or filed a declaratory statement, but died before perfecting title to the claim, leaving no widow or surviving minor children entitled as his only heirs to benefits under the regulations of this part.

(d) As of the date of issuance of § 2033.1 the Korean Conflict has not yet been declared terminated by Presidential proclamation or by concurrent resolution of Congress, as required by the 1944 act.

§ 2033.1–2 Credit for and evidence of service.

(a) Any person, entitled to benefits under the regulations of this part, may obtain credit only for actual service, with the organizations and for the "statutory periods" specified in the regulations of this part, subject to minimum requirements specified in the regulation in this part except as follows:

(1) Credit is granted for the equivalent of two years' service, regardless of the actual length of service by a veteran entitled to the benefits of the 1944 act, if the veteran was discharged because of wounds received or disability incurred in line of duty during the "statutory period" of the 1944 act; or after regular discharge, was furnished hospitalization or awarded compensation by the Government on account of such wounds or disability; or died as the result of wounds received or disability incurred in line of duty during such period.

(2) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars" who was discharged because of wounds received or disability incurred in the line of duty, or who subsequent to discharge was awarded compensation for such wounds or disability.

(3) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars", except of the Indian wars, if the veteran died during the term of his enlistment.

(4) Credit is granted for service by any "veteran of other wars" except of the Indian wars, for the full term of the service under his enlistment, although such term did not expire until after the war ceased.

(5) Credit granted for service between May 9, 1916, and March 3, 1921, includes time spent in a course of training under the Vocational Rehabilitation Act of June 27, 1918 (40 Stat. 617), or under treatment in a Government hospital on account of wounds or disabilities incurred in line of duty during that period.

(b) For the purpose of the regulations of this part, credit for service in the military or naval forces of the United States begins upon induction into such service whether by enlistment, draft, appointment, or call into active service from a reserve status. Credit for service by a veteran entitled to the benefits of the 1944 act terminates upon his honorable discharge or release from active duty under honorable conditions to an inactive status, whether or not in a reserve component, or retirement, and whether or not he has thereafter resumed active duty. He is considered to have been honorably discharged for the purposes of the 1944 act if he has been separated from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions. Credit for the service by a member of the Naval Reserve or of the Federalized National Guard who was called into active service during the Mexican border operations or during World War I terminates upon the date of his actual discharge, and not upon the date that he was ordered to inactive duty. Except for veterans of Indian wars who served with State or Territorial troops, qualifying service does not include service with State or Territorial troops, units of the Red Cross, or the National Guard prior to assignment or after the termination of the assignment of such units or troops into the service of the United States.

(c) No credit for military service can be allowed where commutation proof is submitted.

(d) A veteran claiming benefits under this part must submit evidence clearly showing:

(1) A discharge from the armed forces or other unit on the basis of service with which he claims benefits under the regulations in this part;

(2) The period of his service; and

(3) Other facts upon which his claim is based.

Preferred evidence for subparagraphs (1) and (2) of this paragraph is a photostatic copy of both sides of the veteran's certificate of discharge although other duly corroborated evidence will be accepted.

(e) Any other person claiming benefits under this section must submit all the evidence required of a veteran; and in addition, must include information as to whether the veteran is deceased, the date of his or her death, and whether the spouse has remarried, and facts as to homestead entry made by the veteran. A guardian, duly appointed and accredited to the Department must represent any surviving minor children. He must submit a like statement, and in addition give the name, address, and age of each surviving minor child.

§ 2033.1–3 Residence requirements under the homestead and Alaska homesite laws.

(a) Persons claiming benefits under the regulations in this part must comply with the homestead or Alaska homesite laws, as the case may be, for a period of at least one year and for such additional period as, added to the term of qualifying service, equals three years. Except as elsewhere indicated in this section, the following tables list the amount of residence required of such persons, according to the service credit to which they are entitled.

(1) Residence requirements under the homestead laws (43 U.S.C., sec. 161, et seq.):

(i) In the computation of the required periods of homestead residence, there has been excluded the five months' of absence each year which may be taken by giving notice as required in Subpart 2211.

Number of months of service credit	Number of months of residence required during the first 3 years after entry		
	1 year	A second year	A third year
19 or more	7	----------	----------
18	7	1	----------
17	7	2	----------
16	7	3	----------
15	7	4	----------
14	7	5	----------
13	7	6	----------
7 to 12	7	7	----------
6	7	7	1
5	7	7	2
4	7	7	3
3	7	7	4
2 [1]	7	7	5
1 [1]	7	7	6

[1] Applicable only as to service in any Indian war, campaign, or in a zone of active Indian hostilities since veterans need a minimum of only 30 days service to obtain statutory benefits for such service.

(2) Residence requirements under the Alaska Homesite Act (48 U.S.C., sec. 461):

(i) These reduced residence requirements are applicable only to persons entitled to the benefits of the 1944 act.

Number of months of service credit	Number of months of residence required after entry		
	1 year of the entry	A second year of the entry	A third year of the entry
17 or more	5		
16	5	1	
15	5	2	
14	5	3	
13	5	4	
5 to 12	5	5	
4	5	5	1
3	5	5	2

(b) The following persons are excused from residence requirements:

(1) The surviving spouse, surviving minor orphan children, or other heirs or devisees, of a homestead entryman, who have succeeded to the homestead entry are excused from further residence on the land after the death of the entryman.

(2) Surviving minor orphan children of a veteran entitled to the benefits of the 1944 act who made an Alaska homesite entry are excused from further residence on the land after death of the entryman.

§ 2033.1–4 Cultivation and other requirements under the homestead and the Alaska homesite laws.

(a) An entryman entitled to benefits under the regulations in this part must comply with the requirements of these regulations and any others relating to his entry under the homestead or Alaska homesite law. If the entryman succeeds to the rights of a deceased entryman, the successor must show that the deceased entryman had complied with the applicable laws and regulations up to the time of his death.

(b) A homestead entryman obtaining benefits under the regulations in this part, may comply with the cultivation and other requirements and become entitled to a patent for his homestead prior to the termination of the three-year period otherwise required of homestead entrymen for such compliance, if he promptly files his final homestead proof. He must in any case cultivate at least one-eighth of the area entered. The following tables indicate the area of cultivation required under the homestead law of such persons, according to the service credit to which they are entitled.

(1) Cultivation requirements under the homestead laws for persons entitled to the benefits of the 1944 act:

Year after date of entry during which proof is filed [1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First [2]	1/8				
Second [3]		1/8			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] This table assumes that final homestead proof is filed promptly after completion of the cultivation requirements listed in the above table. The homestead law requires cultivation until final proof. If the homesteader delays submission of final homestead proof beyond the period of residence required, therefore, he must perform the necessary cultivation during each annual cultivable season elapsing or reached before the submission of proof, except for those years to which his service credit is applied.

[2] Applicable only to persons entitled to credit for 19 months or more of service.

[3] Applicable only to persons entitled to credit for 7 months or more of service.

(2) Cultivation requirements under the homestead laws for persons entitled to the benefits of "veterans of other wars":

Year after date of entry during which proof is filed [1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First [2]					
Second [3]		1/16	1/8		
Third		1/16	1/8	1/8	
Fourth		1/16	1/8	1/8	1/8
Fifth		1/16	1/8	1/8	1/8

[1] See footnote 1 in table in subparagraph (1) of this paragraph.

[2] See footnote 2 in table in subparagraph (1) of this paragraph.

[3] See footnote 3 in table in subparagraph (1) of this paragraph.

(c) The following persons are excused from any further compliance with the requirements of laws and regulations relating to the entries t owhich they have succeeded, nor do they have to show that the entryman had complied with applicable laws and regulations prior to his death:

(1) The surviving minor orphan children of a person entitled to the benefits of the 1944 act.

(2) The surviving minor orphan children of anyone else who made homestead entry but who died prior to perfection of title, leaving only a minor child or minor children.

(3) The widow of a veteran, or in case of her death or remarriage, the surviving minor children, if the veteran settled on the public lands but died prior to perfecting his title, while actually engaged in the military or naval service of the United States during the war with Spain, the Philippine Insurrection, the Mexican border operations, or World War I.

(d) A person entitled to benefits under the regulations of this part may receive a reduction in the area to be cultivated under the homestead regulations Subpart 2211 in the same manner and under the same conditions required of other applicants.

§ 2033.1–5 Soldiers' and sailors' declaratory statements.

(a) "Veterans of other wars" may initiate a homestead entry by filing a soldiers' and sailors' declaratory statement. Separate forms approved by the Director are available for: (1) Veterans who served between May 9, 1916 and March 3, 1921. (2) Veterans who served at other times and who are filing through an agent acting under power of attorney. (3) Veterans who served at other times and who are filing in person. Such statements must be accompanied by a nonrefundable application service charge of $10.

(b) In Alaska the veteran must commence residence on the land within 6 months after the filing of his statement. Elsewhere he must commence residence within 6 months after allowance of his entry.

(c) Filing of a declaratory statement segregates the lands from all forms of appropriation.

(d) Filing of a declaratory statement in Alaska exhausts the person's homestead right, subject to such relief as may be provided by the general homestead laws.

§ 2033.2 Act of October 17, 1940; benefits to persons in military service.

§ 2033.2–1 Claims protected from forfeiture.

No right to any public land owned or controlled by the United States, initiated or acquired under any laws of the United States, including the general mining and mineral leasing laws, by any person prior to entering the military service will during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon, or for failure to do any other act required by or under such laws.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–2 Rights protected.

No public land claimant in the military service will be denied the right to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering the military service.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–3 Rights of minors.

Any person under 21 years of age who serves in the military service while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, will be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over 21 possess under such laws. Any requirement as to the establishment of residence within a limited time will be suspended as to entry by such person until 6 months after his discharge from the military service. An application for entry by such person need not be under oath but must be signed by him.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–4 Notice, proof, required.

(a) *Notice.* The claimant must give notice of his military service on a form approved by the Director to the proper land office in the State or Territory, or for notice concerning lands in a State in which there is no land office to the Bureau of Land Management, Washington 25, D.C., except that the applications for lands in North or South Dakota to the land office at Billings, Montana; for lands in Nebraska or Kansas to the land office at Cheyenne, Wyoming; and for lands in Oklahoma, to the land office at Santa Fe, New Mexico, on or before April 17, 1941, or within 6 months after his entrance into the military service, in order to obtain the relief and benefits extended by the Soldiers' and Sailors' Civil Relief Act of 1940, in connection

with an application, entry, lease, permit or license, or settlement or other right or claim initiated or acquired under the public land laws prior to entering the military service (except a mining location). The notice should be sent by registered mail, unless it is filed in the proper office personally, by the claimant or his agent. The holder of a mining location must give notice of his military service before the close of the assessment year, which ends at noon of July 1 of each year, in accordance with § 2033.2–7 (b).

(b) *Execution of affidavits.* A person in the military service may execute any affidavit or submit any proof required by law or the regulations of the Bureau of Land Management, in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which he is engaged. Such affidavit will be as binding in law, and with like penalties, as if taken before a manager of a land office.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–5 Homesteads.

Homestead claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture, as provided in § 2033.2–1:

(a) *Credit for military service.* Any person having a valid homestead settlement claim, or any person who has made homestead application for public lands which is allowed after the date of the filing thereof, or any homestead entryman whose application has been allowed, who after such settlement, application or entry enters the military service, is entitled, in the administration of the homestead laws, to have his military service construed to be equivalent to residence and cultivation upon the tract settled upon or entered, for the period of such service. Moreover, if he is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability will be deducted from the required length of residence, without reference to the time of actual service. No patent will issue, however, until he has resided upon, improved and cultivated his homestead for a period of at least 1 year. He will be entitled during each year's required residence to a 5 months' leave of absence, in like manner as any other homesteader. In order to obtain the credit mentioned, notice of military service must be given in accordance with § 2033.2–4(a).

(b) *Credit for physical disabilities due to military service.* Any person entitled to credit for military service who is honorably discharged and because of physical incapacity due to such service is unable to return to the land, may make proof, regardless of whether or not 1 year's residence, improvements, and cultivation have been had, without further residence, improvements, or cultivation, at such time and place as the manager of the proper land office may authorize, and receive a patent to the land entered.

(c) *Farm labor by homesteader during war.* (1) During the pendency of any war in which the United States may be engaged while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, any homestead entryman will be entitled to a leave of absence from his entry for the purpose of performing farm labor. The act does not authorize such leave of absence, if the United States does not engage in war. The time actually spent in farm labor will be counted as constructive residence, if within 15 days after leaving his entry to engage in such labor the entryman files in the proper land office a notice of absence from the land, and if at the expiration of the calendar year the entryman files in the proper office a written statement corroborated by two witnesses giving the date or dates when he left the entry, the date or dates of his return, and the place where and the person for whom he was engaged in farm labor during the period or periods of his absence.

(2) The provisions in subparagraph (1) of this paragraph will not excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law, and they will apply only to persons whose applications were allowed or filed prior to October 17, 1940.

(d) *Widow, heirs, and minor children of homesteader.* If any person having a valid settlement claim or a pending or allowed homestead application dies while in the military service or as a result of such service his widow, if unmarried, or in the case of her marriage or death, his minor children or his or their legal representatives, may submit final proof without showing further residence, cultivation or improvements. If the deceased claimant had a valid homestead settlement claim for which application had not been filed, a homestead application based thereon must be presented. If the claim is on unsurveyed land, a homestead application cannot be presented until the land has been surveyed. In such case, request for survey should be made as promptly as possible, accompanied by a duly corroborated statement showing when the settlement claim was made, the periods during which deceased claimant resided upon and cultivated the land, and the facts as to his military service. The death of the claimant while in the military service or as a result of such service will be construed to be equivalent to a performance of all requirements as to residence and cultivation upon the homestead claim. Upon the submission of satisfactory proof, patent will be issued to the person or persons entitled thereto.

(e) *Contest of homestead.* (1) On and after October 17, 1940, and as long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a homestead entry made or applied for prior to the entrance of the entryman into the military service, will be allowed, or adverse proceedings against such entry ordered, on the ground of abandonment, unless there is an allegation therein that the entryman's alleged absence from the land was not due to his military service. No allegation of abandonment will be sustained against a homestead settler or entryman in connection with such contest, unless it is proved at the hearing, if one be had, that the claimant's alleged absence from the land was not due to such military service.

(2) The manager will reject an application to contest a homestead entry on the charge of abandonment, if he finds that it was filed during the period of the entryman's military service, or during any period of hospitalization of the claimant because of wounds received or disability incurred in the line of duty. If any charge other than or in addition to abandonment is made, or if the claimant enters the military service or is hospitalized after the contest application is filed, the proceedings will be suspended for the period of such service or hospitalization.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–6 Desert-land entries.

Desert-land claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture as provided in § 2033.2–1:

(a) *Credit for military service.* No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into the military service, will be subject to contest or cancellation for failure to make or expand the sum of $1 per acre per year in improvements on the land or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service or during a period of 6 months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land will be exclusive of his period of service and the 6-months' period and any such period of hospitalization. In order to obtain the benefits mentioned, notice of military service must be given in accordance with § 2033.2–4(a).

(b) *Credit for physical incapacities due to military service.* Any person who is entitled to credit for military service who is honorably discharged and because of physical incapacities due to his military service and who is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation or payment and receive patent for the land entered or claimed.

(c) *Contest of desert-land entry.* (1) On and after October 17, 1940, and as long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a desert-land entry made or applied for prior to the entrance of the claimant into the military service will be allowed, or adverse proceedings against such entry ordered, for failure of the claimant to make or expend the sum of $1 per acre per year in improvements upon the claim, or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service, or during a period of 6 months thereafter, or during any period of hospitalization because of wounds or disability incurred in the line of duty, unless there is an allegation therein that the alleged default did not occur during such military

service or hospitalization. No allegation of such default will be sustained against a desert-land claimant in connection with such contest unless it is proved at the hearing, if one be had, that the alleged default did not occur during such military service or hospitalization, as indicated.

(2) Any contest proceedings involving a desert-land entry, brought either before or after the claimant enters the military service, will be suspended for the period of such service and for 6 months thereafter, and during any period of hospitalization of the claimant because of wounds or disability incurred in the line of duty.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–7 Mining claims.

The relief and benefits extended because of military service and the requirement as to notice of such service, made by section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940, in connection with mining claims, are as follows:

(a) *Claims protected from forfeiture.* The provisions of section 2324 of the Revised Statutes, which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year, will not apply during the period of the claimant's military service, or until 6 months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in the line of duty, to claims or interests in claims which are owned by such person and which have been regularly located and recorded. No mining claim nor any interest in a claim which is owned by such a person and which has been regularly located and recorded will be subject to forfeiture for nonperformance of the annual assessment labor during the period of such military service, or until 6 months after the termination of such service, or of such hospitalization.

(b) *Notice of military service.* The holder of a mining location who desires to obtain the relief and protection mentioned in paragraph (a) of this section, must, before the expiration of the assessment year during which he enters the military service, file or cause to be filed in the county recording office in which the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold the mining claim under section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940. The notice may be given on a form approved by the Director.

(c) If application for patent to the mining claim has been made, notice of the military service must also be filed in the proper land office, or if there is no such office in the State, it must be filed in the Bureau of Land Management, in accordance with § 2033.2–4(a).

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–8 Installment payments for land, under homestead and other entries.

Where under the law under which a particular entry was made, installment payments for the land become due during the period of the military service, such period will not be considered a part of the aggregate period of time originally allowed for the completion of such payments and the time for the making of the payments will be appropriately extended. Where the term of the military service is 1 year or less, the time of payment of each installment maturing during or after such term will be extended for 1 year; where the term of service is between 1 and 2 years, the extension will be for 2 years; and similar extensions will be granted for longer terms of service. The payment so extended will be due upon the same day of the year as is now required and no interest will be charged during the period of the suspension.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2033.2–9 Leases, permits, licenses, and claims.

(a) No mineral or grazing lease, or any mineral, timber, or other permit or license, or any application for such lease, permit or license, or any right or claim which has been applied for or acquired under the public land laws by any person prior to entering the military service, will, during the period of such service, be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or to make any improvements thereon, or his failure to do any other act required by or under such laws.

(b) Where during the period of the military service, the claimant or his agent continues to operate or to make use of the land in accordance with the terms of the lease, permit, or other right, the rentals, royalties, and other obligations will become due and payable as provided by such instrument. If in a particular case the ability of the claimant to make such payment has been affected materially by reason of his military service, a showing of the facts may be made and such relief as may be deemed appropriate will be granted.

(c) The regulations in this section for the suspension of leases, permits, licenses, etc. are based on the general protection accorded all claims contained in section 501 of the Soldiers' and Sailors' Civil Relief Act of 1940, the specific authority for the suspension of leases and permits issued under the Federal mineral leasing laws, contained in section 506 of the act, and the general authority conferred on the Secretary of the Interior, to issue rules and regulations, contained in section 507 of the act.

(d) Any person having a mineral lease or permit, a grazing lease, or any lease, permit, license or other right involving the public lands, under the administration of the Bureau of Land Management, including claims the suspension of which is not specifically authorized by any section of the act, who enters the military service may, at his election, suspend all operations under such instrument for a period of time equivalent to the period of his military service and 6 months thereafter. The term of the lease or permit will not run during the period of such suspension, no rentals or royalties for the period of the suspension will be charged, and no use of the land during such period by the claimant or his agent under such instrument may be made.

(e) In order to obtain the benefits of section 506 of the act (mineral leases and permits) and to protect the benefits granted by section 501 of the act (other rights) notice of military service must be given in accordance with § 2033.2–4 (a). Such notice will enable the Secretary to take steps to protect the rights involved. Failure to give such notice may result in their loss, as when valid interests of third parties intervene or when the land becomes appropriated to other uses.

(f) The suspension of a lease, permit, license, etc., will not be construed to supersede the terms of any contract for the operation thereof.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

Group 2100—Acquisitions

PART 2110—GIFTS

Subpart 2110—Gifts; General

Sec.
2110.0–1 Purpose.
2110.0–3 Authority.

Subpart 2111—Procedures

2111.1 Offer to convey.
2111.2 Acceptance of offer.
2111.3 Deed of conveyance.
2111.4 Status of lands.

AUTHORITY: The provisions of this Part 2110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a, and R.S. § 2478, as amended; 43 U.S.C. 1201. Interpret or apply sec. 8, 48 Stat. 1272, as amended; 43 U.S.C. 315g.

Subpart 2110—Gifts; General

§ 2110.0–1 Purpose.

The Secretary of the Interior will accept as a gift, lands, with or without improvements thereon, with or without limitations or conditions as to the future use and disposition thereof, in fee simple or any interest less than fee, where possession of such land or interest will promote the purposes of a grazing district or facilitate the administration or contribute to the improvement, management, use or protection of public lands and their resources. The authority of the Secretary is discretionary and acceptance of offers rests, among other things, upon a determination that the public interest will be served thereby.

§ 2110.0–3 Authority.

(a) Section 8(a) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, authorizes the Secretary of the Interior to accept on behalf of the United States, any lands within or without the exterior boundaries of a grazing district as a gift, where such action will promote the purposes of a district or facilitate the administration of the public lands.

(b) Section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364), authorizes the Secretary to accept contributions or donations of real or mixed property, including rights-of-way, for the improvement, management, use and protection of the public lands and their resources administered by the Bureau of Land Management.

Subpart 2111—Procedures

§ 2111.1 Offer to convey.

(a) Any person desiring to make a gift, contribution, or donation of land or interest in land to the United States should submit an offer to convey and transfer said property to the United States voluntarily. The offer should be transmitted to the porper land office in acordance with the provisions of § 1821.2 of this chapter.

(b) The offer should designate the statute under which the gift is to be made and should describe the lands by legal subdivisions of the public land surveys, if possible, with a description of any permanent improvements fixed to the land. Any limitations on title should be fully detailed and any conditions as to future use and disposition of the land should be set forth.

(c) The offer should be accompanied by a statement showing that the offeror is the record owner in fee of lands so offered, free and clear of all encumbrances; that there are no persons claiming the land adversely to the offeror; whether there are any unpaid taxes or assessments levied or assessed against the offered land or that could operate as a lien thereon; whether there is a tax or assessment due on such lands or that could operate as a lien thereon, but which tax or assessment is not yet payable; and that there are no unredeemed tax deeds outstanding against the lands.

§ 2111.2 Acceptance of offer.

Where the authorized officer finds that acceptance of the offered lands is in consonance with the program set forth in § 2110.0–1, he shall advise the offeror of the acceptance of the offer and request the offeror to submit a voluntary deed of conveyance to the United States of the land offered, together with an affidavit that the offeror has not conveyed or encumbered the land in any manner from the time of making the offer up to and including the date of recordation of the deed.

§ 2111.3 Deed of conveyance.

The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State in which the lands are situated. The deed should recite that it is made "as a gift," as authorized by statute appropriately designated. Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the spouse of the donor must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of curtesy or dower, or any claim whatsoever to land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such spouse has no interest, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, the order or direction of the board of directors or other governing body should be recited in the deed, and a copy thereof must accompany the instrument of transfer. Both the deed and the instrument must bear the impression of the corporate seal.

§ 2111.4 Status of lands.

Upon acceptance of the deed of conveyance, the lands or interests so conveyed will become property of the United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by the authorized officer.

PART 2120—LEASES

Subpart 2120—Leases; General

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2120.0–2 Objectives.
2120.0–3 Authority.

Subpart 2121—Procedures

2121.1 Evidence of ownership.
2121.2 Leases.
2121.2–1 Form of lease.
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2121.4–3 Allocation of funds appropriated.
2121.5 Improvements by the United States on leased lands.

AUTHORITY: The provision of this Part 2120 issued under 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 2120—Leases; General

§ 2120.0–2 Objectives.

When it is determined by the authorized officer that any State, county, or privately owned lands located within grazing districts are chiefly valuable for grazing, and are necessary to promote the orderly use, improvement, and development of grazing districts, steps should be taken to secure offers of leases of such lands from the owners thereof.

§ 2120.0–3 Authority.

(a) The act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m–1, 315m–4 inclusive), commonly known as the Pierce Act, authorizes the Secretary of the Interior in his discretion to lease, at rates to be determined by him, any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of grazing districts created under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) when in his judgment, the leasing of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein.

(b) Pursuant to section 161 of the Revised Statutes (5 U.S.C. 22) and section 2 of the act of June 28, 1934 (43 U.S.C. 315a), the authorized officer of the Bureau of Land Management may approve leases under the Pierce Act on behalf of the United States in accordance with this part. Leases so approved need not be submitted for Secretarial approval.

Subpart 2121—Procedures

§ 2121.1 Evidence of ownership.

Parties offering to lease lands to the United States under the provisions of this Act will be required to furnish evidence of ownership as follows:

(a) *Certificate of ownership for State or county lands.* Where State and county lands are offered for lease, a certificate from the proper State or county official will be required showing that title to the lands is in the State or county and that the officer or agency of the State or county offering them for lease is empowered by the laws of such State to lease such lands.

(b) *Certificate of ownership for private lands.* Where privately owned lands are offered for lease, the party offering them will be required to file with the local office of the Bureau of Land Management certificates from either the proper county officials, a licensed abstracter, or an administrative officer of the Bureau of Land Management whichever is required by an authorized officer, certifying that the records of the county in which the lands are situated show that the party offering the lands for lease is the record owner thereof or in legal control of such lands under appropriate recorded lease permitting the subleasing of the property, and including an itemized statement showing the nature and extent of any liens, tax assessments, mortgages, or other encumbrances.

§ 2121.2 Leases.

§ 2121.2–1 Form of lease.

Leases under the Pierce Act should conform in general to a form approved by the Director. This form is believed adaptable for use in all of the States within which grazing districts have been established under the Taylor Grazing Act. Leases under the Pierce Act must be executed by the lessor in the manner prescribed by the laws of the State within which the lands leased are situated.

§ 2121.2–2 Period of lease.

Leases may be made for such periods as are deemed proper by an authorized officer in promoting a proper land-use program in connection with the public range, not to exceed, however, the 10-year period as limited by the Pierce Act, beginning with the date of the approval of such lease.

§ 2121.2–3 Approval of lease; renewal.

Local negotiations for leasing of lands under this act will not be effective until the lease and any renewal thereof has been approved by an authorized officer of the Bureau of Land Management. Upon such approval the lease should be recorded in the land records of the county in which the land is situated.

§ 2121.3 Payment of rental.

The carrying capacity of the lands will be taken into consideration in negotiating the rental to be paid. Payment of rentals will be made annually by the United States at the end of the period for which licenses or permits to graze on the lands involved have been granted, or as soon thereafter as the moneys collected by the United States from its licensees or permittees for the use of such lands have been appropriated by the Congress in accordance with the provisions of the Pierce Act, and made available for such purpose, or moneys for the payment of such rentals have been made available through contributions under section 9 of the Taylor Grazing Act (48 Stat. 1273; 43 U.S.C. 315h).

§ 2121.4 Fees.

§ 2121.4–1 Computation of fees.

The aggregate of the grazing fees collected for the use of the lands leased under the provisions of the Pierce Act must be sufficient to insure a return to the United States of an amount equal to the aggregate of the rentals paid for such lands and the aggregate of the grazing fees collected for the use of all the lands leased in any one State must be at least equal to the aggregate of the rentals paid in that State.

§ 2121.4–2 Disposition of receipts.

All moneys received in the administration of lands leased under the Pierce Act will be deposited in the Treasury of the United States as provided in section 4 of that Act and will be available when appropriated by the Congress for the leasing of lands. Distribution of such receipts, therefore, will not be made as provided in sections 10 and 11 of the Taylor Grazing Act (48 Stat. 1273; 43 U.S.C. 315i, 315j).

§ 2121.4–3 Allocation of funds appropriated.

Moneys received in the administration of lands leased under the Pierce Act, when appropriated by the Congress, will be allocated to the budgets of the State Director for disbursement in accordance with that act and the regulations in this part. Records of disbursements thereof will be maintained under existing procedure.

§ 2121.5 Improvements by the United States on leased lands.

The procedure in placing improvements on any lands leased under the Pierce Act, will, so far as practicable, be the same as provided under Part 4110 of this chapter.

Group 2200—Dispositions

PART 2200—DISPOSITIONS; GENERAL

Subpart 2201—Private Entries

Sec.
2201.1 Private cash entries not permitted, except in Missouri.

Subpart 2202—Price of Public Lands

2202.1 Minimum and double minimum price of the public lands.

AUTHORITY: The provisions of this Part 2200 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 2201—Private Entries

§ 2201.1 Private cash entries not permitted, except in Missouri.

(a) The first section of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 700), provides that from and after its passage "no public lands of the United States, except those in the State of Missouri, shall be subject to private entry." This relates to the private sale or entry of "offered" lands under sections 2354 and 2357, Revised Statutes (43 U.S.C. 673, 678). No sale at private entry will be admissible under said first section, except in Missouri, in which State all public lands are subject to private sale by section 2 of the act of Congress approved May 18, 1898 (30 Stat. 418; 43 U.S.C. 675), but in making purchase under that act the purchaser is required to show the absence of any prior adverse settlement right.

(b) Section 4 of the act of March 3, 1891 (26 Stat. 1097) repealed the laws allowing preemptions of the public lands but provided for the perfecting of all bona fide claims theretofore lawfully initiated.

(c) Section 10 of the said act of March 3, 1891 (26 Stat. 1099; 25 U.S.C. 426) permitted further preemptions to be made on certain Indian lands. However, on June 1, 1938, there was little or no such land remaining subject to preemption, due either to the disposal of the land or to its withdrawal from entry and disposal. For this reason, the regulations governing preemption entries have not been codified.

Subpart 2202—Price of Public Lands

§ 2202.1 Minimum and double minimum price of the public lands.

(a) Except as specifically provided by law (See R.S. 2455, as amended; 43 U.S.C. 1171), no land shall be sold, either at public or private sale, for less than $1.25 per acre, which is therefore called the "minimum price," and lands held for sale at that price are called "minimum lands." (R.S. 2357)

(b) The double minimum price established by law is $2.50 per acre, and lands held for sale at that price are called "double minimum lands."

(c) Alternate reserved sections within the limits of railroad grants are double minimum in price (R.S. 2357; 43 U.S.C. 678), except such as were put in market at the enhanced price prior to January 1, 1861, and were subject to entry June 15, 1880, all of which were reduced in price to $1.25 per acre by the third section of the act of Congress of June 15, 1880 (21 Stat. 238; 43 U.S.C. 679), and except those opposite those portions of railroads not completed on March 2, 1889, which were reduced in price by section 4 of the act of that date (25 Stat. 854; 43 U.S.C. 681), or where a different price is provided for in statutes for the disposal of lands under special conditions.

PART 2210—OCCUPANCY

Subpart 2211—Homesteads

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2211.0–8 Initiation of claims.
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Subpart 2212—Native Allotments

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Subpart 2213—Trade and Manufacturing Sites

Sec.
2213.0–3 Authority.
2213.0–6 Qualifications of applicant.
2213.1 Procedures.
2213.1–1 Initiation of claim.
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2213.1–4 Publication and posting; adverse claim.
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Subpart 2214—Color-of-Title

2214.0–3 Authority.
2214.1 General regulations.

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2214.2–1 Application.
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2214.4 Erroneously meandered lands, Louisiana.
2214.4–1 Applications.
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2214.5–1 Qualifications of applicants.
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Subpart 2215—Mining Claim Occupancy Act

2215.0–2 Objectives.
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2215.0–5 Definitions.
2215.1 Petitions.
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2215.4 Offers of alternate tracts.

Subpart 2211—Homesteads

AUTHORITY: The provisions of this Subpart 2211 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2211.0–6 Applicants.

(a) *Examination of land.* (1) Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

(2) As each applicant is required to state that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the statement that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

(b) *Qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(1) Married women, except as stated in paragraph (c) of this section.

(2) Persons who have already made homestead entry, except as stated in §§ 2211.4 to 2211.5.

(3) Foreign-born persons who have not declared their intention to become citizens of the United States.

(4) Persons who are the owners of more than 160 acres of land in the United States.

(5) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(6) Persons who have acquired title to or are claiming, under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres.

(c) *Married women.* A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following classes:

(1) Where she has been actually deserted by her husband.

(2) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(3) Where the husband is confined in a penitentiary and she is actually the head of the family.

(4) Where the married women is the heir of a settler or contestant who dies before making entry.

(5) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for 1 year next before the marriage and neither one abandons the land prior to filing application for entry.

(6) The marriage of an entrywoman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife cannot maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they cannot hold both entries unless they are entitled to the benefits of the act of April 6, 1914, as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167), explained in § 166.62 (38 Stat. 312, 41 Stat. 1193; 43 U.S.C. 167).

(d) *Widows.* A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

(e) *Office holders.* Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

(f) *Insanity of entryman.* Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of 3 years after the date of the entry, he is required to reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

(g) *Adjoining farm entry.* An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

§ 2211.0–7 Lands subject to entry.

All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character, are not occupied for the purposes of trade or business, and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city; but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn under the Reclamation Act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals), are made subject to the particular requirements of the laws under which such lands are opened to entry.

NOTE: Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to homestead settlement or entry until such appropriation is authorized by classification.

§ 2211.0–8 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) Claims under homestead laws may be initiated by settlement on either surveyed or unsurveyed lands of the kind mentioned in the foregoing section. Claims may also be initiated on surveyed lands of that kind by the filing of a soldier's declaratory statement, or by the presentation of an application to enter.

(2) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions.

(b) *Settlement claims.* Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within 3 months after settlement upon surveyed lands or within that time after the filing in the land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost.

(c) *Application for survey of settlement claims.* Application for the survey of unsurveyed lands may be addressed to the Area Administrator having local jurisdiction by any settler or settlers who can show the necessary qualifications. The applicant must show the location of the township by giving its approximate number, range, and meridian; that he is a bona fide settler therein; under what law he wishes to acquire the land; what the character of the land is, and for what it is suitable; the number of the settlers residing upon the land desired to be surveyed; when his residence began and to what extent he has cultivated and improved the land claimed; that his application for survey of the lands described is made in good faith and not at the instance or in the interest or for the benefit of any other person.

CROSS REFERENCE: For Surveys in Alaska, and surveys and resurveys, generally, see Part 9180 of this chapter.

(d) *Alienation of all or part of claim; mortgages; relinquishments.* (1) The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (43 U.S.C. 174), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

(2) A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned. A mortgagee who files notice of his interest in the land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

(3) The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Department of the Interior subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes (43 U.S.C. 164), and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

(4) Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

(e) *Liability of claim for debts of homesteader.* Under section 2296, Revised Statutes and Public Resolution No. 53, approved April 28, 1922 (42 Stat. 502; 43 U.S.C. 175), lands acquired under the provisions of the homestead laws and laws supplemental thereto and amendatory thereof do not become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

§ 2211.0–9 Mortgage loans.

(a) *Mortgage loans on existing homestead entries.* (1) A homestead entryman desiring a loan on an existing homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Corporation of the Department of Agriculture.

(2) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Corporation. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Corporation.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled homestead entry was closed, the land will become subject to sale by the Farmers Home Corporation.

(b) *Mortgage loans on enlarged homesteads.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b), should proceed in accordance with paragraph (a) of this section.

(c) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

§ 2211.1 Procedures.

§ 2211.1–1 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application together with a petition on forms approved by the Director. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on a form approved by the Director.

§ 2211.1–2 Showing required of applicant.

(a) *General requirements.* Each application to enter and the statements accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual

settlement and cultivation; and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make any agreement or contract in any way or manner with any person, or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

(b) *Indian applicants.* (1) *Certificate required under act of July 4, 1884.* (i) The manager will require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(ii) When such an application is presented without this certificate the manager will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(iii) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

(2) *Where Indian makes entry as citizen.* (i) A certificate from the Commissioner of Indian Affairs that the applicant is entitled, as an Indian, to make a homestead entry, should be required only of applicants under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), from whom no fee or commissions are required.

(ii) If an Indian making application under the general homestead act states that he is a citizen of the United States, the manager will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

(3) *Charges, patents.* The act of July 4, 1884 (23 Stat. 6; 43 U.S.C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the citizen homestead patent is issued on entries made under said act or the act of March 3, 1875 (18 Stat. 420; 43 U.S.C. 189).

(c) *Settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must in addition to the facts required in paragraph (a) of this section state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens; but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

§ 2211.1–3 Payments; form of remittances; receipts; notice.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

CROSS REFERENCE: For general regulations involving applications and entries, see Subpart 1823 of this chapter. For proofs, see Subpart 1824 of this chapter. For railroad grants see Subpart 2224 of this chapter.

(c) A receipt for the money tendered in connection with an application to enter is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

§ 2211.1–4 Proof.

(a) *Time for making.* (1) Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within 5 years. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

CROSS REFERENCE: For equitable adjudication, see Subpart 2011 of this chapter.

(2) Final proofs in all cases where the same are required by the general land laws or regulations of the Department, should be taken in accordance with the published notice: *Provided, however,* That such testimony may be taken within 10 days following the time advertised in cases where accident or unavoidable delays have prevented that applicant or his witnesses from making such proof on the day specified.

(b) *Officers qualified to take proof.* Final or commutation proofs may be made before any of the officers mentioned in § 1821.3–2 of this chapter as being authorized to administer oaths.

(c) *Notice; publication.* (1) Any person desiring to make homestead proof should first forward a written notice of his desire to the manager of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

(2) The manager will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the manager. The publication must be made once a week for five consecutive weeks, in accordance with § 1824.4 of this chapter.

(3) The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The manager will be responsible for the correct preparation of the notice.

(4) On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

(d) *Who may submit proof*—(1) *General requirements.* Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in §§ 2211.0–6, 2211.1–4(d)(4)(i) and 2211.3–2(a). Final proof can be made only by citizens of the United States.

(2) *Minor orphans of soldiers and sailors.* Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

(3) *When homesteaders intermarry.* (i) Where a homestead entryman or set-

tler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for 1 year, the husband (under the provisions of the act of April 6, 1914 (38 Stat. 312) as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167)) may elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads.

(ii) The act of April 6, 1914, as amended, applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than 1 year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry placed of record before the marriage.

(iii) The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the statements of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and statements be executed in duplicate; then copies of all papers must be filed in each office.

(iv) Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The act of April 6, 1914, as amended, makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed on record in accordance with an approved survey.

(v) If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

(4) *Deserted wife.* (i) The act of October 22, 1914 (38 Stat. 766; 43 U.S.C. 170), provides where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than 1 year, she may submit proof (by way of commutation or otherwise), on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband.

(ii) Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in subdivision (i) of this subparagraph, and all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the manager will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] homestead entryman:

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No. ——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial:

(iii) Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by statement of the person serving the summons, showing its delivery to the entryman. If personal service cannot be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary statement; proof of such attempted service shall be by a statement of the person mailing the letter, to which should be attached the postmaster's receipts therefor.

(iv) Within 30 days after service of summons, the entryman may file his statement denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

(v) After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the manager will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

(vi) If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the manager, for any reason deemed sufficient, may continue the hearing to a later date.

(*a*) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(*b*) All hearings and subsequent proceedings shall be in accord with Parts 1840 and 1850 of this chapter pertaining to contests.

(vii) If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

(e) *Citizenship requirements.* (1) When proof is submitted it must be shown that the homesteader is a citizen of the United States: *Provided, however,* That a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one (38 Stat. 740; 43 U.S.C. 168).

(2) In all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of the facts concerning the marital status and citizenship in accordance with Subpart 1811 of the chapter.

(3) Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when made in accordance with Subpart 1811 of this chapter.

§ 2211.1–5 Amendments; exercise of equitable powers.

Applications for amendment presented pursuant to § 1821.6–5(a) will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6 and 2226.1–6(a) and on the prescribed form, insofar as the same are applicable. A supple-

mental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCE: For desert-land entries, see Subpart 2226 of this chapter.

§ 2211.2 Requirements for proof.

§ 2211.2–1 Habitable house.

The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

§ 2211.2–2 Residence.

(a) *For 3-year proof.* With the exception of adjoining farm homestead entries and entries allowed under certain laws not requiring residence, a homestead entryman must establish residence upon the tract entered within 6 months after date of the entry, unless an extension of time is allowed, as explained in paragraph (c) of this section and must maintain residence there for a period of 3 years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph (e) (1) (i) of this section.

(b) *For commutation proof.* (1) All original second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(2) The entryman, or his statutory successor, must show that substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 2211.2–3(a), as to 3-year proof.

(3) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding 5 months of which he had given notices as provided by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164).

(4) A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily $1.25 per acre, but is $2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(5) The claimant must show full citizenship, as in case of 3-year proof.

(6) The provisions of law explained in § 2211.2–3(b) apply to commutation proof also.

(7) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 224), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.); entries under the Enlarged Homestead Act (35 Stat. 639; 43 U.S.C. 218); entries allowed on coal lands under the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213); second entries allowed under the act of June 5, 1900 (31 Stat. 269; 43 U.S.C. 217); second entries allowed under the act of May 22, 1902 (32 Stat. 203; 25 U.S.C. 423); when the former entry was commuted; or entries within forests under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509).

(c) *Extension of time to establish.* (1) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence cannot be established on the land within 6 months after the date of the entry, additional time, not exceeding 6 months, may be allowed. An application for such extension must include the statements of the entryman, and two witnesses acquainted with the facts. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

(2) If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first 6 months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(3) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(d) *Reduction in requirements*—(1) *Authority.* The act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the manager of the land office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, but less than 5 of which shall be in each year and proof must be submitted within 5 years.

(2) *To 6 months in each year.* (i) An entryman desiring to avail himself of the privilege accorded by the act of February 25, 1919, must, within 1 year after the allowance of his entry, file in the land office an application (preferably on the approved form) corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as 7 months in each year, and stating whether he wishes the requirement in his case to be fixed at 6 months' residence in 4 successive years or at 5 months' residence in 5 successive years. The statement of claimant and the witnesses need not be sworn to. If the showing is satisfactory, the manager will allow it. If it is not satisfactory, he will reject the application, subject to the usual right of appeal, and all appeals will be forwarded promptly.

(ii) If the application requests a reduction to 5 months' residence in each year, the manager may, if proper, grant partial relief; that is, fix the residence period at 6 months in each year, his decision being subject to review by the Bureau of Land Management on appeal from his decision, of which the party will be notified with all promptness.

(iii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(3) *To 5 months in each year.* (i) Where a homesteader has secured a reduction of the residence requirements to 6 months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to 5 months in each of 5 years.

(ii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(4) *Conditions warranting reduction.* To entitle a homesteader to the benefits of the act of February 25, 1919, he must show that the climatic conditions in the vicinity of the land entered are ordinarily, not in exceptional years, such as would render it a hardship for him to reside there for a greater part of each year than for 5 or for 6 months, as the case may be.

(5) *Residence each year in one continuous period.* Under this provision of the act of February 25, 1919, there is no authority to allow two absence periods, but the 5 months' residence or the 6 months' residence, as the case may be, must be in one continuous period.

(6) *Time for making proof.* (i) Proof on an entry must be made within 5 years after its allowance, notwithstanding the fact that relief may have been granted under the act of February 25, 1919, but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

(ii) An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown, unless a reduction has been granted in the requirements in that regard.

(7) *Credit for military service.* Credit on account of a period of military service will be allowed as on other entries, but at least 1 year's compliance with the homestead laws must be shown in every case.

CROSS REFERENCE: For soldiers' and sailors' homestead and preference rights, see Subpart 2033 of this chapter.

(8) *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by subparagraphs (1) to (7) of this paragraph and who gives notice of the approximate location of the lands settled upon and claimed may be granted the benefits of the act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), providing for prolonged absences due to climatic conditions.

(e) *Absences*—(1) *Up to 5 months.* (i) During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as 5 months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the land office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than 5 months and file notice of his return, he may, without any intervening residence again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

(ii) *On unsurveyed land.* Under the act of July 3, 1916 (39 Stat. 341; 43 U.S.C. 232), a settler upon unsurveyed, unreserved, and unappropriated public land is entitled to one or two leaves of absence during each residence year, aggregating not more than 5 months in each year, after establishing of residence, in the same manner and upon the same conditions as persons having entries of record. If he has returned after an absence of less than 5 months and filed notice of his return, he may, without any intervening residence, again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

(iii) *Notice of settlement claim.* The act of July 3, 1916, does not authorize the filing of a notice of a settlement claim except as included in a notice of absence from the land; unless the paper tendered shows the beginning or ending of an absence, the manager will decline to receive it.

(2) *For 1 year.* (i) Leave of absence for 1 year or less may be granted by the manager of the land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be signed by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted cannot be counted in his favor.

(ii) All applications for leave of absence for one year or less because of failure of crops, sickness, or other unavoidable casualty must be accompanied by an application service fee of $5 which will not be returnable.

(f) *Contest.* Where a contest is initiated against an entry, prior to filing of notice to submit communication proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended (43 U.S.C. 164, 169), and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment cannot be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 234), or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

§ 2211.2–3 Cultivation.

(a) *For 3-year proof.* (1) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

(2) During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. The required area of cultivation may be reduced, under certain conditions, as set forth in paragraph (b) of this section. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in subparagraphs (1) to (3) of paragraph (b) of this section.

(b) *Reduction of requirements.* (1) The requirements as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction must be filed at the proper land office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(2) A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice of the misfortune and of its nature must be submitted to the manager of the land office, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(3) No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman cannot reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made

in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area.

(4) Applications for reduction in area of cultivation will be acted upon by the manager of the land office, who may in appropriate cases defer action until final proof, but his decision in granting or refusing applications for reduction in area shall be subject to review, upon appeal, by the Director, Bureau of Land Management and by the Secretary of the Interior.

(5) All applications for reduction in area of cultivation must be accompanied by an application service fee of $5 which will not be returnable.

(c) *Elimination of requirements.* (1) The act of March 31, 1938 (52 Stat. 149; 43 U.S.C. 237d), amended the act of August 19, 1935 (49 Stat. 659), so as to extend its provisions to applications made prior to February 5, 1935. As amended the act provides that, with certain specified exceptions, described in subparagraph (3) of this paragraph, the provisions of the homestead laws requiring cultivation of the land entered shall not be applicable to existing homestead entries made prior to February 5, 1935, or thereafter if based upon valid settlement or application made prior to said date, and no patent shall be withheld for failure to cultivate such lands.

(2) In all cases where said acts apply, no proof shall be rejected solely for failure to show that the cultivation requirements of the homestead laws have been complied with.

CROSS REFERENCE: For proofs, see Subpart 1824 of this chapter.

(3) The law does not apply to homestead entries made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), and amendment thereof, known as the reclamation law; or under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), and amendments thereof, known as the law providing for entry of agricultural lands within national forests; or to homestead entries in the State of Alaska.

§ 2211.2–4 Agricultural entries of withdrawn coal lands.

The act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and the act of June 25, 1910, was not intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, and as to such lands certain nonmineral entries may be allowed, as provided for by the act of June 22, 1910, notwithstanding their withdrawal under act of June 25, 1910.

CROSS REFERENCE: For agricultural entries on mineral lands, see Subpart 2023 of this chapter.

§ 2211.3 Rights of widows, heirs or devisees.

§ 2211.3–1 On death of settler.

(a) If a homestead settler dies without having filed application for entry, the right to enter the land covered by his settlement passes to his widow. If there be no widow, said right passes to his heirs or devisees.

(b) Persons who make entry as the widows, heirs, or devisees of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the time during which the settler resided on and cultivated the land, will make the required period of 3 years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs, devisee, or widow, or in part by the settler and in part by the widow, heirs, or devisee.

§ 2211.3–2 On death of entryman.

(a) If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

(b) Persons succeeding as widow, heirs, or devises to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of 3 years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

§ 2211.3–3 Heirs of contestants.

If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancelation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

§ 2211.4 Additional entries.

§ 2211.4–1 After proof; on original claim (act of March 2, 1889).

(a) *Statutory authority.* Section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received the managers final receipt for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land originally entered by him, as shall not with it exceed a total of 160 acres.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 6 of the Act of March 2, 1889, must comply with the provisions of § 2211.1. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

(c) *Residence, cultivation, and proof required.* Upon allowance of the additional entry, entrymen will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and within the period prescribed by statute, to submit proof of such resi-

dence and cultivation as in other homestead cases.

§ 2211.4–2 For land contiguous to original entry (act of April 28, 1904 as amended).

(a) *Authority.* Section 2 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), as amended by the act of August 3, 1950 (64 Stat. 398; 43 U.S.C. 213) authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional lying contiguous to the original entry which, with the land first entered and occupied will not in the aggregate exceed 160 acres. Section 3 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), prohibits the submission of commutation proof of an entry made under that act.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 2 of the act of April 28, 1904, must comply with the provisions of § 2211.1–1. In addition, he must file with the prescribed form or forms a reference to the act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

(c) *Final proof.* Before proof may be submitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry.

The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

(d) *Cancellation of original entry.* An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

§ 2211.5 Second entries.

§ 2211.5–1 Former entry lost, forfeited or abandoned (act of September 5, 1914).

(a) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries.

(b) The question whether the first entry, or entries, were made before or after the passage of the act of September 5, 1914 is entirely immaterial. Moreover, it will be seen that the act imposes upon the Bureau of Land Management the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911 (36 Stat. 896) limiting its benefits to a clearly defined class of persons.

(c) In order that the Bureau of Land Management may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper land office an application to enter a specific tract) furnish his statement showing the following facts:

(1) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township and range.

(2) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and, in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(3) With reference to a homestead entry, whether he established residence upon the tract, and, if so how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and, if so, how long he continued to exercise acts of ownership thereover.

(4) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(5) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(6) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

(d) The statement described in the preceding section must be signed by the applicant and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; statements of witnesses must be signed by them. Appropriate blank forms will be furnished by the managers.

§ 2211.5–2 By person who paid price for land ceded by Indians (act of June 21, 1934).

(a) Statutory authority. (1) Under the act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a), any person who theretofore had made entry under the homestead laws on any lands embraced within any reservation ceded to the United States by the Indian tribes, and had paid for his land the sum of at least $1.25 per acre, upon proof of such facts, if otherwise qualified, is entitled to the benefit of the homestead law as though such former entry had not been made. The provisions of said act do not apply to any person who has failed to pay the full price for his former entry or whose former entry was canceled for fraud. In making any new homestead entry as authorized by said act or the prior similar acts of February 20, 1917 (39 Stat. 926), and February 25, 1925 (43 Stat. 981; 43 U.S.C. 187), such entry may not include any land to which the Indian title has not been fully extinguished.

(2) The act of June 21, 1934, has no application if the first entry be canceled. Such cases will be governed by the general statutes allowing second entries.

(b) *Showing as to prior entry.* A person claiming the right of second homestead entry pursuant to the provisions of the act of June 21, 1934, must furnish a description of the land included in his perfected entry or data from which it can be identified, and he must state that he paid $1.25 or more per acre for the tract, but it is not necessary that he name the precise price paid. If the former entry embraced tracts appraised at less than $1.25 per acre and tracts appraised at more than $1.25 per acre, a second entry hereunder is not allowable unless the aggregate sum of the appraised prices of the former entry equals $1.25 per acre or more.

(c) *Requirements as to completion of prior entry.* A second entry is not allowable unless the first entry was made prior to June 21, 1934, and unless satisfactory final proof has been submitted thereon and the entire price of the land included therein has been paid prior to the date of the application for second entry.

(d) *Laws under which second entry rights may be exercised.* A person who is entitled to the benefits of the act of June 21, 1934, may at his option make second entry under either the general homestead law, or the Enlarged Homestead Act. Compliance with the law must be shown as though it were an original entry.

CROSS REFERENCE: For enlarged homesteads, see § 2211.6.

(e) *Land not subject to second entry.* The act of June 21, 1934, prohibits the allowance of any application to make a second homestead entry thereunder or under the act of February 20, 1917, or the act of February 25, 1925, if it includes any land to which the Indian title shall not have been fully extinguished.

§ 2211.5–3 After commutation or payment of Indian price (acts of June 5, 1900, May 17, 1900 and May 22, 1902).

Where a person commuted a homestead entry before June 5, 1900, or paid the Indian price of the land entered before May 17, 1900, his homestead right

is restored. See acts of June 5, 1900, and May 22, 1902 (sec. 2, 31 Stat. 269; 43 U.S.C. 217, and sec. 2, 32 Stat. 203; 25 U.S.C. 423), and the act of May 17, 1900 (31 Stat. 179; 25 U.S.C. 421).

§ 2211.6 Enlarged homesteads.

§ 2211.6–1 General regulations.

(a) *States affected; character of land.* (1) The act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218) (extended by later legislation to additional States), and the act of June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

(2) The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as dry farming, and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

(3) Lands containing merchantable timber, or valuable minerals other than coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Entry may be allowed for the surface only of lands containing any of the minerals named. A legal subdivision will not be regarded as irrigable and excluded from designation under these acts because a minor portion of it is susceptible of irrigation unless said portion is at least one-eighth thereof. Where there is an application for additional entry after submission of final proof on the original the land covered by the original will not be regarded as irrigable, and excluded from designation, upon the ground that more than one-eighth of any subdivision is irrigable, unless said original embraces the equivalent of 20 or more acres of land in a reasonably compact body that can be thoroughly irrigated and reclaimed.

(4) A tract included in an entry under the Enlarged Homestead Acts or in any entry under the general law, and an additional entry under said acts, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said acts.

(5) An original entry under the Enlarged Homestead Acts may not exceed one and one-half miles in extreme length (47 L.D. 370).

(b) *Initiation of settlement claims under enlarged homestead law.* Under the act of August 9, 1912 (37 Stat. 267; 43 U.S.C. 166, 223), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

§ 2211.6–2 Petitions and applications.

(a) A person who desires to enter public lands under the enlarged homestead laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application should be filed. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana, and petitions for lands in Kansas must be filed in the land office at Cheyenne, Wyoming.

(b) Any person qualified to make an original homestead entry for 160 acres is qualified to make entry under the Enlarged Homestead Acts for 320 acres.

(c) When a homesteader applies to make entry, he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof can be accepted or approved until all charges have been paid.

(d) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2211.6–3 Application to enter with petition for designation.

(a) *Act of March 4, 1915.* (1) Under the act of March 4, 1915 (38 Stat. 1162; 43 U.S.C. 220), a person may file an application for entry under the Enlarged Homestead Act of a tract of surveyed land which has not been designated thereunder, accompanied by a petition for its designation, or he may file application for additional entry though part of the land involved has not been designated, accompanied by like petition. He thus secures a preference right of entry if the land be thereafter designated. An additional entry cannot be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore petitions should in all cases cover so much of both tracts as has not already been designated.

(2) The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who in good faith has acted upon such designation. Each entryman must furnish a statement giving the information required by section 2 of the Enlarged Homestead Acts.

(3) The act of March 4, 1915, applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

(b) *Execution of application.* (1) Where a preference right under the act of March 4, 1915, is sought there must be filed at the proper land office the usual application for entry, original or additional, as the case may be, signed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's statement, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved, both tracts, if additional entry is sought.

(2) This statement which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(3) In case of applications for entry under sections 1 to 5, commonly known as the general provisions of the Enlarged Homestead Act, the statement should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

(i) The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon, such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and

reclaim the tract, or if it had been included in a desert-land entry, the reasons for lack of success should be stated.

(ii) The statement should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(4) In cases of applications for entry under section 6 of the Enlarged Homestead Acts, applicable to Utah and Idaho, the statement should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and other pertinent facts as to wells situated either in the vicinity of the tract or nearest thereto, and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

(i) If the tract has not theretofore been designated under sections 1 to 5 of the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under sections 1 to 5, as explained in this section.

(5) The filing of a statement, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the State Director to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the Enlarged Homestead Act under which the claim is filed.

(c) *Segregative effect of application.* No other appropriation of the land will be allowed before the application has been finally disposed of. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

§ 2211.6–4 Additional entry for contiguous lands.

(a) *Before proof on original claim.* (1) Under section 3 of the Enlarged Homestead Acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been designated for entry under those acts, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional. Credit for compliance with the law as to additional entry may be allowed from the date of the filing of the application to enter.

(2) Where a person makes entry under the general provisions of the homestead laws, and before submission of proof on said entry makes an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof.

(3) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for 1 year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in § 2211.2–3 (b) of this chapter are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(4) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for 1 year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i.e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than 7 years from the date of the original entry.

CROSS REFERENCE: For proofs, see Subpart 1824 of this chapter.

(b) *After proof on original claim (act of March 3, 1915).* (1) The act of March 3, 1915 (38 Stat. 956; 43 U.S.C. 218, 219), amends sections 3 and 4 of the Enlarged Homestead Acts of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), and June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

(2) *Who may make additional entry; additional information required.* The act of March 3, 1915, confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. It should be observed that no change has been made in the requirement of the law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other. Where a person desires to make an entry under the Act of March 3, 1915, he must file in addition to the form or forms required by § 2211.6–2 (a) and (b) a statement showing continued ownership and occupancy of the land first entered, and a statement setting forth the character of the land in both tracts. These statements together with the required forms will be considered as a petition for designation under the enlarged homestead laws.

(3) *Residence.* The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the 5-year or the 3-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(4) *Cultivation.* The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under the act of March 3, 1915. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within 5 years after the date of the additional entry.

CROSS REFERENCE: For cultivation requirements, see §§ 2211.2–1 to 2211.2–2 and 2211.2–3(b) and (c).

§ 2211.6–5 Additional entries for incontiguous lands.

(a) *Acts of July 3, 1916 and Sept. 5, 1916.* Under section 7 of the Enlarged Homestead Acts, added thereto by the act of July 3, 1916 (39 Stat. 344; 43 U.S.C. 218), and the act of September 5, 1916, (39 Stat. 724; 43 U.S.C. 219), a person who has submitted final proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted.

(b) *20 Mile Limitation.* A qualifed person who owns and continues to reside on his original entry may make entry for two or more incontiguous tracts within 20 miles of his original entry, if unable to secure in one tract the entire area he is entitled to enter; but one who no longer owns his original entry, or

who seeks land not within 20 miles therefrom, can not be allowed to enter incontiguous tracts under this act.

(c) *Conditions under which additional entry may be made.* Section 7 of the Enlarged Homestead Acts has no application unless the first entry was made in one of the States where the Enlarged Homestead Act is in force, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incontiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

(d) *Qualifications required of applicant.* The only qualifications required of an applicant under section 7 of the Enlarged Homestead Acts are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

(e) *Designation of original and additional tracts.* It is not necessary that any of the land be designated under the Enlarged Homestead Act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for designation of the undesignated land, as provided by the act of March 4, 1915 (38 Stat. 1162; 43 U.S.C. 220), and separate petitions must be filed for the different tracts if both be undesignated.

(f) *Showing required for proof.* (1) There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

(2) In the proof, to be submitted within 5 years after the date of additional entry, there must be shown residence on the additional tract, or on the original, if permitted under the 20-mile exception above explained, for not less than 3 years, subject to the privilege of being absent 5 months in each year, as provided by the 3-year homestead law; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry, and of not less than one-eighth of its area during the third year and until submission of proof; but residence and cultivation for the requisite period after the date of the application and until the submission of proof will be accepted. Credit for military service will be allowed as in other cases.

(g) *Showing required in petition for designation.* (1) As in other cases, a petition for designation, filed in connection with an entry under section 7 of the Enlarged Homestead Acts, must consist of a statement, signed in duplicate by the applicant and at least two witnesses, setting forth a description by legal subdivisions of all the land involved, its character, and the conditions governing the irrigability of both tracts.

(2) If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(h) *Entries under section 6 of Enlarged Homestead Act.* The provisions of the acts of July 3 and September 5, 1916, do not apply to entries under section 6 of the Enlarged Homestead Act.

§ 2211.6–6 Additional entry for double the area of the additional rights.

(a) *Act of February 20, 1917.* The act of February 20, 1917 (39 Stat. 925; 43 U.S.C. 215), permits a person who has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, to enter under the Enlarged Homestead Act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated.

(b) *Designation required of additional tract.* The act of February 20, 1917, permits an additional entry under the Enlarged Homestead Act to be made for a tract designated as subject thereto, although the land included in the applicant's perfected entry be not thus designated; it is immaterial whether he owns the original tract, and the additional tract may be contiguous thereto or at any distance therefrom.

(c) *Description required of all former entries.* The application must contain a description of all entries theretofore made by the applicant or such data as will serve to identify them.

(d) *Area of additional right.* Under section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), a person who has partially exhausted his homestead right through a perfected entry is entitled to make an additional entry for so much land as will with the area of the completed entry make 160 acres. The act of February 20, 1917, supplements that legislation by providing that the additional land, if designated under the Enlarged Homestead Act, shall be estimated at only one-half its actual area in the calculation under the act of March 2, 1889. To illustrate: If the person has obtained title to 40 acres, he may make additional entry for not exceeding 240 acres of enlarged homestead land, that is, twice 120; if he has had 80 acres, he may still take 160 acres of such land; if he has had 120 acres, he may now take an additional 80 acres.

(e) *Petition for designation.* In connection with an application pursuant to the provisions of the act of February 20, 1917, a petition for designation of the land sought may be filed as provided in other cases of applications under the Enlarged Homestead Act, and the proceedings with relation to the application and petition will be as in other cases.

(f) *Right to additional area, when application cannot be allowed under section 3 or 7 of Enlarged Homestead Act.* Where an application is filed for additional entry under either section 3 or section 7 of the Enlarged Homestead Act, and the Secretary of the Interior or other authorized officer refuses to designate thereunder the tract included in the original perfected entry, the application may be allowed for so much of the land sought as the claimant is entitled to enter under the act of February 20, 1917, provided said land be designated as subject to the Enlarged Homestead Act.

(g) *Showing required for proof.* In proof on an entry allowed pursuant to the provisions of the act of February 20, 1917, there must be shown the existence of a habitable house upon the land entered and the usual residence and cultivation. Residence must be for not less than 3 years, subject to the privilege of being absent 5 months in each year, in two periods if desired. There must be cultivation of not less than one-sixteenth of the land entered during the second year after the date of the entry, and not less than one-eighth of its area during the third year and until submission of proof. However, credit for military service will be allowed as in other cases. Proof must be submitted within 5 years after the date of the entry.

§ 2211.6–7 Designation of national forest lands as basis for additional entries.

(a) *Act of March 4, 1923.* By act of March 4, 1923 (42 Stat. 1445; 43

U.S.C. 222), provision has been made whereby the Secretary of the Interior may designate under the Enlarged Homestead Act national forest lands embraced in subsisting or perfected homestead entries of 160 acres or less so that such forest homestead entries may be the basis for additional entries under said act.

(b) *Intent and purpose of act of March 4, 1923.* The intent and purpose of the act of March 4, 1923, is to permit persons holding existing or perfected homestead entries for lands within national forests of a character subject to designation which the applicant owns and on which he resides, to make additional entries for such a quantity of land outside of the national forest and within 20 miles of the original entry as when added to the area of the original entry will not exceed 320 acres, if under section 1 thereof.

(c) *Procedure for entry and proof.* The procedure in making and perfecting an entry under section 1 of the act of March 4, 1923, will be in all respects similar to that explained in §§ 2211.6–1 to 2211.6–4, covering additional entries under the Enlarged Homestead Acts, the only difference being that at the time of making the entry hereunder after proof on an original entry, the applicant must show ownership of and residence on the land in the original entry, instead of ownership and occupancy, and an additional hereunder may be made for land not adjourning that in the original entry. Residence on the original entry may be credited on both entries, but cultivation of the land in the additional entry must be as indicated in § 2211.6–4(a).

§ 2211.6–8 Nonresidence homesteads.

(a) *In Utah.* (1) The sixth section of the act of February 19, 1909 (35 Stat. 640; 43 U.S.C. 218), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act.

(2) During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. This requirement is made by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 218). Proof may be submitted on entries of this class within 7 years after their dates.

(3) The rules relating to petitions for designation of lands apply to section 6 of the enlarged Homestead Act.

(b) *In Idaho.* The sixth section of the act of June 17, 1910 (36 Stat. 531, as amended by the act of August 10, 1917 (40 Stat. 275; 43 U.S.C. 219), provides that 1,000,000 acres of land in the State of Idaho which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon them possible, may be designated by the Secretary as subject to entry thereunder, without the necessity of residence upon such lands, by the entryman. One: sixteenth of the cultivatable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho."

§ 2211.6–9 Lands subject to Kinkaid entry.

(a) *Size of entry.* (1) It is directed by the act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 24) commonly known as the Kinkaid Act, that in that portion of the State of Nebraska lying west and north of the line described therein, upon and after June 28, 1904, except for such lands as might be thereafter and prior to said date excluded under the proviso contained in the first section thereof, homestead entries may be made for and not to exceed 640 acres, the same to be in as nearly a compact form as possible, and must not in any event exceed 2 miles in extreme length.

(2) While the Kinkaid Homestead Act authorizes original homestead entries for not exceeding 640 acres, and additional entries for an area sufficient with the area of the originals to make up 640 acres, the maximum area of land withdrawn by E. O. 6964, Feb. 5, 1935 which may be entered under said act and section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f) is 320 acres. See Subpart 2411 of this chapter.

(b) *Additional entry contiguous to original; ownership and occupancy of original required.* (1) Under the provisions of the second section of the act of April 28, 1904, as amended by section 7 of the act of May 29, 1908 (35 Stat. 466; 43 U.S.C. 224), a person who within the described territory has made entry prior to May 29, 1908, under the homestead laws of the United States, and who owns and occupies the lands theretofore entered by him, and is not otherwise disqualified, may make an additional entry of a quantity of land contiguous to his said homestead entry, which, added to the area of the original entry, shall make an aggregate area not to exceed 640 acres; and he will not be required to reside upon the additional land so entered, but residence continued and improvements made upon the original homestead entry subsequent to the making of the additional entry will be accepted as equivalent to actual residence and improvements on the land covered by the additional entry. But residence either upon the original homestead or the additional land entered must be continued for the period of 3 years from the date of the additional entry, except that entrymen may claim and receive credit on that period for the length of their military service, not exceeding 2 years.

(2) Such additional entry must be for contiguous lands, and the tracts embraced therein must be in as compact a form as possible; and the extreme length of the combined entries must not in any event exceed 2 miles.

(3) In accepting entries under the act of April 28, 1904, compliance with the requirements thereof as to compactness of form should be determined by the relative location of the vacant and unappropriated lands, rather than by the quality and desirability of the desired tracts.

(c) *Additional entry contiguous or incontiguous to original; ownership and occupancy of original not required.* By the first proviso of section 3 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224), any person who made a homestead entry either within the Kinkaid territory or elsewhere prior to his application for entry under this act, if no other disqualification exists, will be allowed to make an additional entry for a quantity of land which, added to the area of the land embraced in the former entry, shall not exceed 640 acres, but residence upon and cultivation of the additional land will be required to be made and proved as in ordinary homestead entries. But the application of one who has an existing entry and seeks to make an additional entry under said proviso can not be allowed unless he has either abandoned his former entry or has so perfected his right thereto as to be under no further obligation to reside thereon; and his qualifying status in these and other respects should be clearly set forth in his application.

(d) *Second entry.* Under the act of April 28, 1904, no bar is interposed to the making of second homesteads for the full allowable area by parties entitled thereto under existing laws, and applications therefor will be considered under the instructions of the respective laws under which they are made.

(e) *Proof*—(1) *Time.* A person who has a homestead entry upon which final proof has not been submitted, and who makes additional entry under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224), will be required to submit his final proof on the original entry within the statutory period therefor, and final proof upon the additional entry must also be submitted within the statutory period from date of that entry.

(2) *Improvements required.* Upon final proof, which may be made after 3 years and within 5 years from date of entry, the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than $1.25 per acre for each acre, and such proof must also show residence upon and cultivation of the land for the 3-year period as in ordinary homestead entries, but credit for military service may be claimed and given.

(3) *Form.* In the making of final proofs the homestead-proof form will be used, modified when necessary in case of additional entries made under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224).

(4) *Payments required; form of remittances.* (i) When a homesteader applies to make entry, he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(ii) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(f) *Commutation prohibited.* Entries under the act of April 28, 1904, are not subject to the commutation provisions of the homestead law.

§ 2211.7 Reclamation homesteads.

§ 2211.7–1 Entries on reclamation withdrawals.

(a) *Effect of reclamation withdrawals.* (1) Section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), provides for the withdrawal of lands from all disposition other than that provided for by said act. Since the passage of the act of June 25, 1910 (36 Stat. 835; 43 U.S.C. 436, 437), lands withdrawn as susceptible of irrigation are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by an authorized officer, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law. The Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto are hereinafter referred to generally as the reclamation law.

(2) Under the provisions of the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), the prohibition contained in section 5 of the act of June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm-unit plats and the announcement of the fact that water is ready to be delivered to the land, is set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

(b) *Provisions governing reentries.* (1) Settlement and entry of such lands will be allowed subject to the provisions of the homestead law and the reclamation law in the same manner as for other lands subject to entry within reclamation projects except that the certificate of the official in charge of the project that water-right application has been made and charges deposited, which must be filed in the ordinary case, is not required. See paragraph (c) of this section. The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present act in cases where a relinquishment of the former entry has been or shall be filed.

(2) Entries are permitted under the act of February 18, 1911, as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), upon the relinquishment of an entry made prior to June 25, 1910, and the right to enter such land is not limited to one or more entries or entrymen.) Lena Hektner, 42 L.D. 462.) This act has no application where the cancellation of the entry made prior to June 25, 1910, was the result of a contest or of a relinquishment resulting from the same. (Fred V. Hook, 41 L.D. 67.) The act is also inapplicable in the case of lands withdrawn under the first form and has reference only to lands covered by second-form withdrawals. (Annie G. Parker, 40 L.D. 406.)

(c) *Homestead entries in reclamation projects.* Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry and managers will allow homestead applications for such lands, if found regular, and accompanied by a certificate of the official in charge of the project showing that water-right application has been filed and the proper water-right charges deposited and that the applicant has qualified under subsection C of section 4 of the act of December 5, 1924 (43 Stat. 702; 43 U.S.C. 433). No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the official in charge. Where under the reclamation law lands within the reclamation project are subject to entry notwithstanding public notice covering said lands has not yet issued, such certificate of the official in charge is not required, and in such cases the application, if otherwise regular, will be received and entry allowed. The manager will immediately notify the official in charge of each entry allowed, stating whether the entry was allowed with or without the certificate of the official in charge above referred to.

CROSS REFERENCE: For lands in State irrigation districts, see Subpart 2253 of this chapter.

(d) *Subdivision of farm unit.* (1) An entry may be made of part of an established farm unit (a) when the remaining portion of said unit is also desired for entry simultaneously by another person and is, in the judgment of the official in charge of the project, sufficient, if carefully managed, to return to the reclamation fund the charges apportioned to the irrigable area thereof, or (b) can be advantageously included as part of an established farm unit, or (c) can in combination with existing farm units be advantageously replatted into new farm units, each sufficient, if carefully managed, to support a family and return to the reclamation fund the charges apportioned to the irrigable area of the several new farm units.

(2) Where it is desired to make entry of part only of a farm unit, an application for the amendment and subdivision of such unit should be filed with the official in charge of the project. If such subdivision is rectangular and survey is not required to determine the division of the irrigable area of the farm unit as proposed to be divided, no charge will be made. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit or the division of the irrigable area, the official in charge will proceed as directed in § 2211.7–4(a)(4). Upon such application being filed, the official in charge will either approve or disapprove the same, and, if approved, proceed as directed in § 2211.7–4(a)(5).

(3) The farm units may be as small as 5 acres where the lands are suitable for fruit raising, etc., but as a rule they are fixed at from 40 to 160 acres each. These areas are announced on farm-unit plats, and public notice stating the amount of the charges and other details concerning payment is issued by the authorized officer. Until this public notice is issued it is impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice.

(e) *Additional entries.* A person who has made homestead entry for any area within a reclamation project, cannot make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project. (38 L.D. 58.)

(f) *Notices to project managers.* Notice of all action in the land office or in the Bureau of Land Management regarding any entry for which water-right application has been made, or may be made, whether subject to the reclamation law or not, shall be given immediately by the manager to the official in charge of the project by the forwarding of copy of decision in the case. The official in charge shall advise the manager of all action regarding any water-right application or contract by the Bureau of Reclamation affecting the status or validity of the homestead or desert-land entry covering the land. Among the several actions of which the manager is especially directed to notify the official in charge, are:

(1) Allowance of entries.

(2) Conformation of entries to farm units.

(3) Cancellation of entries.

(4) Applications for reinstatement of entries.

(5) Acceptance of final proof.
(6) Issuance of final certificate.
(7) Issuance of patent.
(8) Acceptance or rejection of assignments under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441).

(9) Contest against entries, granting leave of absence, death or disability of entryman, or any other actions materially affecting the entry, or affecting land under reclamation withdrawal.

(g) *Contests*—(1) *Rights of successful contestants.* An entry embracing lands included within a first- or second-form reclamation withdrawal, whether such entry was made before or after the date of such withdrawal, may be contested and canceled because of entryman's failure to comply with the law or for any other sufficient reason, except that for failure to pay for construction charges or charges for operation and maintenance no contest will lie, and any contestant who secures the cancellation of such entry and pays the land-office fees occasioned by his contest will be awarded a preferred right of making entry. Should the land embraced in the contested entry be within a reclamation withdrawal at time of successful termination of the contest, the preferred right may prove futile, for it cannot be exercised as long as the land remains so withdrawn, but should the lands involved be restored to the public domain or a farm-unit plat be approved for the lands and announcement made that water is ready to be delivered, the preference right may be exercised at any time within 30 days from notice of the restoration or the establishment of farm units. It should be the duty, however, of such contestant to keep the manager advised respecting his residence to which notice may be sent him of his preference right of entry in event of successful contest, when the land is subject to entry, and a notice mailed to his address, shown by the records of the land office at the time of the mailing of the notice of preference right, will be held to meet the requirements of the act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 185). No contest can be allowed, however, against any qualified entryman who prior to June 25, 1910, made bona fide entry upon lands proposed to be irrigated and who established residence in good faith upon the lands entered by him for failure to maintain residence or to make improvements upon his land prior to the time when water is available for its irrigation.

(2) *When contests are allowable.* Under the regulations in subparagraph (1) of this section and in this subparagraph, the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(i) Where the entry was made on or after June 25, 1910.

(ii) Where the entry was made prior to June 25, 1910, and it is alleged that the entryman failed to establish residence in good faith upon the lands entered by him.

(iii) Where the entry was made prior to June 25, 1910, and a period of 90 days has elapsed since the issuance of public notice under section 4 of the Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the date when water will be available for irrigation of the land.

(iv) Where the entry was made prior to June 25, 1910, for any causes other than "failure to maintain residence or make improvements upon the land prior to the time when water is available."

(h) *Exchanges*—(1) *Applications for exchange.* The act of March 4, 1915 (38 Stat. 1215; 43 U.S.C. 447), provides for the exchange of lands included in pending entries, for other lands in the same project, under certain conditions. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and a statement by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

(2) *Conditions permitting exchange; act of March 4, 1915.* The act of March 4, 1915, permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the Department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

(3) *Conditions permitting exchange; other acts.* Other exchanges within reclamation projects under certain conditions, have been authorized, as indicated below:

(i) The act of August 13, 1953 (67 Stat. 566; 43 U.S.C. secs. 451–451k), provides for the exchange of certain unpatented farm units of private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(ii) Section 44 of the act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c) authorizes exchanges of unpatented entries and private lands for other public lands within the same project or any other Federal reclamation project.

(iii) Departmental orders of May 10, 1922 and July 31, 1924, permit the exchange of unpatented and patented land and water-right entries under the act of January 25, 1917 (39 Stat. 868) in Part One, Mesa Division, Yuma Irrigation Project, Arizona.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–2 Loans.

(a) *Mortgage loans on existing reclamation homestead entries.* (1) A reclamation homestead entryman or a recognized assignee thereof desiring a loan on an existing reclamation homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C., Supp. III secs. 1006a, 1006b), should consult the Farmers Home Corporation of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior.

(2) Where a reclamation homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land would be subject to reclamation homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished. An applicant for such land should first consult the Farmers Home Corporation and the Bureau of Reclamation. Such a reclamation homestead application must not be filed in the land office until the applicant has been selected by the Farmers Home Corporation and the Bureau of Reclamation, and he has been directed by the Farmers Home Corporation to file the application.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the reclamation homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling reclamation homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the reclamation or homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled reclamation homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled reclamation homestead entry was closed, the land will become subject to disposition by the Secretary of Agriculture.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–3 Leave of absence.

(a) *Showing required.* (1) Applications for leave of absence should be duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set

forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof. The statement regarding the availability of water for irrigation must be corroborated by certificate of the official in charge of the project, to be filed with the application for leave.

(2) All applications for leave of absence within Federal irrigation projects under the act of June 25, 1910, must be accompanied by an application service fee of $5 which will not be returnable.

(b) *Period of leave.* When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

(c) *Effect of granting leave.* Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment, and by the necessary implication of the act the period within which the entryman is required to submit final proof will be extended and the entry will not be subject to cancellation for failure to submit proof until the expiration of the period allowed in which to submit final proof, exclusive of the period for which leave of absence may be granted. Under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), no qualified entryman for lands within a reclamation project whose entry was made prior to June 25, 1910, and who established residence in good faith upon the lands so entered shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time public notice is issued fixing the water-right charges and announcing that water is available for the irrigation of the land embraced in his entry. Within 90 days after the issuance of public notice under section 4 of the act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the water-right charges and announcing the date when water will be available for irrigation, the entryman must file water-right application for the irrigable land in his entry in conformity with the public notice and farm-unit plate, and must file in the land office a statement showing that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–4 Assignments, mortgages.

(a) *Assignments*—(1) *When assignments may be made.* The act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), authorizes persons who have made or may make homestead entries subject to the reclamation law to assign their entries in whole or in part at any time after filing in the appropriate land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law.

(2) *Farm units.* (i) In cases where the entry involves all or parts of two or more farm units, the entryman may file an election as to which farm unit he will retain and he may assign and transfer to a qualified assignee any farm unit or units or parts of such units which he does not elect to retain. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

(ii) Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit must be filed with the official in charge of the project, together with the showing required by paragraph (a)(4) of this section. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the agent cashier, Bureau of Reclamation, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(3) *Limitations and conditions.* (i) The law expressly makes assignments "subject to the limitations, charges, terms, and conditions of the Reclamation Act," which, among other things, limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges.

(ii) Assignments must be an absolute sale, divesting the assignor of all interest in the premises assigned. Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in which the land is located, but a quitclaim or warranty deed is preferred.

(iii) Assignees must be more than 21 years of age and must not own, hold, or claim any other farm unit or entry under the reclamation law or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system upon which all installments of construction or building or betterment charges have not been paid in full. If the assignee is a married woman, she must purchase the assignment with her own separate money, in which her husband has no interest or claim (39 L.D. 504 and 43 L.D. 364). If the assignment involves a partial farm unit which an entryman does not elect to retain in accordance with paragraph (a)(2)(i) of this section the assignee must also have an entry or an assignment covering the remainder of such unit.

(4) *Showing required.* Whenever assignments are presented to the land office in accordance with paragraph (a)(5) of this section they must be accompanied by the following:

(i) A showing that the assignment and the assignee meet the requirements of paragraph (a)(3) of this section.

(ii) The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record, or where the original instrument of assignment is presented to an officer having an official impression seal, a copy of the instrument certified by such officer if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the internal revenue law.

(iii) A certificate by the official in charge of the project that water-right application therefor is not receivable or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment.

(iv) Where not all the predecessors in interest to an assignee have had their assignments approved by the land office, such assignee, in addition to the showings required by subdivisions (i), (ii) and (iii) of this subparagraph, must submit satisfactory evidence of title to the land consisting of either the recorded deed or deeds in the chain of title from the original entryman, an abstract of title, or a certificate of title issued by a qualified title company which is acceptable to the Department of the Interior.

(v) A service fee of $5 which will not be returnable.

(5) *When showing is required.* The showing required by subparagraph (4) of this paragraph is required whenever an assignment is presented to the appropriate land office for filing. All assignments should be presented for filing. They must be presented, however, when:

(i) The assignments involve, under paragraph (a)(2)(i) of this section all or part of farm units which an entryman does not elect to retain, or under paragraph (a)(2)(ii) of this section, parts of established farm units.

(ii) The assignee desires to make proof of full compliance with the reclamation law with the view of receiving patent for the land.

(6) *Requirements for patent.* Upon the approval of an assignment, the assignee will become entitled to a patent upon payment of the water-right charges and submittal of satisfactory proof of reclamation as would have been required of the original entryman, and after proof of compliance with the law.

(b) *Mortgages*—(1) *Notice of interest by mortgagees.* (i) Mortgages of lands embraced in homestead or desert-land entries within reclamation projects may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entry-

man in connection with such proceedings, and a like notice of mortgage interest may be filed with the official in charge of the project in case of any lands, whether or not water-right application has been filed under the provisions of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), including homestead entries, desert-land entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by an authorized officer against such lands and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied against such lands.

(ii) All notices of mortgage interest on homestead or desert land entries filed in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

(2) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest filed as provided in the preceding section must be forthwith noted upon the records of the official in charge of the project and of the land office, and be promptly reported to the Commissioner of the Bureau of Reclamation, where like notations will be made. Relinquishment of a homestead or desert-land entry or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), nor an assignment of a mortgaged desertland entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(3) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the lands at foreclosure sale, such mortgagee-purchaser, whether a nonresident or corporation, may, at any time within 1 year after the end of the statutory period of redemption, if there be such statutory period, and if not, at any time within 1 year after such foreclosure sale, make proof of cultivation and reclamation of the land under section 1 of the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), and receive final water-right certificate, provided such mortgagee-purchaser is otherwise qualified so to do. Water will be furnished said land, and no steps will be taken to cancel the water-right application on account of the holdings by the same mortgagee-purchaser of lands in excess of 160 acres, or the limit per single ownership of private land as fixed by an authorized officer for which a water right may be purchased, until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of the foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of such mortgagee-purchaser. To secure the benefits hereof the mortgagee purchasing the land at foreclosure sale must give notice thereof to the manager of the land office and to the officer in charge of the project within 60 days after such purchase.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–5 Rights of widows and heirs of entryman.

(a) *Completion of entries.* The widows or heirs of persons who make entries under the reclamation law will not be required both to reside upon and cultivate the lands covered by the entries of the persons from whom they inherit, but they must reclaim the land as required by the reclamation law, and make payment of all unpaid charges when due.

(b) *Minor heirs.* Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See Heirs of Frederick C. DeLong, 36 L.D. 332.) If in such case the land has been divided into farm units, the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will be required to conform the entry to one farm unit in the same manner as an original entryman by amending the former entry, relinquishing to the United States or assigning to a duly qualified assignee the lands embraced in the entry in excess of the farm unit he elects to retain. The purchaser and his assignees take, subject to the payment of the water-right charges authorized by the reclamation law and regulations thereunder, and must reclaim the land as required by said law, but are not required otherwise to comply with the homestead law. Should the land not be sold for the benefit of the minor heirs, but retained by them, they will be required to show compliance with the requirements of law as to reclamation and payment of the charges.

CROSS REFERENCE: For regulations relating to the payment of water-right charges, see §§ 2211.7–6(b)(1) and 2226.4–8.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–6 Final proof; final certificates; patents.

(a) *Requirements for issuance.* (1) The act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), expressly requires reclamation of one-half of the irrigable area of the entry as finally adjusted before final certificate and patents may issue thereunder, and, therefore, the act does not authorize the issuance of final certificate on homestead entries made subject to the reclamation law, prior to the establishment by an authorized officer of farm units, and the conformation of the entry to an approved unit, for the reason that prior to that time the entry is still subject to adjustment in area, and it can not be determined what area must be ultimately reclaimed under the provisions of the act.

(2) The act of Congress of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541) amends the proviso to section 1 of the act of August 9, 1912 (37 Stat. 265), to read as follows:

Provided, That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate.

(3) Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent.

(4) All persons who make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation law will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the lands, except that where entries were made prior to the issuance of public notice announcing the availability of water for the irrigation of the land and prior to June 25, 1910, in which case, under the departmental decision in the case of ex parte J. H. Haynes (40 L.D. 291), and under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), the submission of final proof is not required within the period during which proof must be submitted under the ordinary provisions of the homestead law.

(b) *Commutation not allowed; conformation to farm units.* Reclamation entries are not subject to the commutation provisions of the homestead law, and on the determination by an authorized officer of the Department of the Interior that the proposed irrigation project is practicable, the entries made prior to June 25, 1910, and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the authorized officer, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas.

(c) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as stated in Subpart 2033 of this chapter will be allowed to claim such credit in connection with entries made under the reclamation law, but will not be entitled to receive final certificate or patent until the waterright charges due have been paid and the requirements as to reclamation have been met.

(d) *Reclamation required.* (1) All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period

required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forefeiture, whether water-right application has been made or not.

CROSS REFERENCE: For cultivation requirements of the homestead laws, see §§ 2211.2–2(b) and 2211.2–3 (b) and (c) of this chapter.

(2) Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead law and have submitted proof which has been found satisfactory but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units have not been established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry, as finally adjusted to an approved farm unit, and payment of all charges due under the public notices and orders issued in pursuance of the reclamation law.

(e) *Requirements of reclamation proof.* Homestead and desert-land entrymen, in making proof of compliance with the reclamation law as to reclamation and payment of reclamation charges due, must submit such proof, duly corroborated by two witnesses, in duplicate, to the official in charge of the project showing these facts. Thereupon it shall be the duty of the official in charge to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of the Bureau of Reclamation and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not yet been accomplished as required he will forward the proofs to the manager of the land office for the district in which the land is situate, with his report or findings thereon, for appropriate action. If the proof be rejected by the manager, appeal will lie to the Director, Bureau of Land Management, as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water charges due on account thereof have been paid and that reclamation has been accomplished as required by the reclamation law. Where prior to issuance of public notice water has been furnished on a water-rental basis to reclamation entrymen or others, and by means whereof reclamation sufficient to obtain patent or water-right certificate under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen or others desiring to obtain patent or water-right certificate under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by an authorized officer. In such cases reclamation homestead entries must be conformed to farm units as established by an authorized officer. If not theretofore created, farm units may be established upon application.

(f) *Certifications by superintendents or other officers of irrigation districts and water users' associations.* (1) On a reclamation project (other than the Salt River Valley Project) or part thereof operated and maintained by an irrigation district or water users' association, the certifications as to the cultivation of, reclamation of, and payments from lands within the boundaries of the irrigation district or within the general territory of the water users' association may be made by the superintendent or other appropriate officers of the district or association, under the seal of the district or association, and when so made will be accepted and given the same force and effect as certifications made by a Government project superintendent: *Provided, however,* That when the certificate relates to payments made by the entryman, and the district or association is delinquent in the payment of charges due from the district or association to the United States, the certificate shall show that the Government charges paid by the entryman to the district or association were paid over to the Government by or on behalf of the district or association.

(2) By Departmental telegram, dated Nov. 26, 1917, the register at Phoenix, Arizona, was instructed to return to the Salt River Valley Water Users' Association for report, recommendation, and forwarding by association to Commissioner, Bureau of Reclamation, all assignments, reclamation homestead entries and certificates of final proof under the reclamation law offered to or filed in his office and that applications to make homestead entries in the Salt River Reclamation project should be noted on his records and forwarded to Commissioner-Bureau of Reclamation for consideration and recommendation.

(g) *What constitutes reclamation and cultivation.* To comply with the provisions of the reclamation law as to reclamation and cultivation, the land must be cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the official in charge of the project of proof of reclamation, except as prevented by hailstorm or flooding, satisfactory crops must be grown on at least one-half of the irrigable area thereof. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or (c) a season's growth of orchard trees or vines of which 75 percent shall be in a thrifty condition. The crop production requirements of this section affecting lands embraced in reclamation homestead entries made after January 1, 1949, must be performed and met by the entryman personally, by members of his immediate family residing with him, or by persons employed under his direction, supervision, and management. The crop production requirements of this section shall be applicable to entryman's successors in interest.

(h) *Time for reclaiming certain lands.* As to all lands subject to the Reclamation Extension Act of August 13, 1914 (38 Stat. 686; 43 U.S.C. 440), at least one-quarter of the irrigable area thereof shall be so reclaimed within three full irrigation seasons after entry or making water-right application, and at least one-half of the irrigable area thereof so reclaimed within five full irrigation seasons after entry or making water-right application, except that the first full irrigation season affecting such land for which water-right application shall have been made prior to May 3, 1915, shall be the irrigation season of 1915. All land thus reclaimed and cultivated shall continue to be so reclaimed and cultivated until after final proof is made and accepted or patent or final water-right certificate issued. Failure to so reclaim lands subject to the said Reclamation Extension Act renders the entry, or, in case of private land, the water-right application therefor, subject to cancellation.

(i) *Liens for unpaid charges*—(1) *On entries under the reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912, as amended by the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), and in the act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), in case of homestead entries under the reclamation law, on ceded Indian lands entered under the Reclamation Act, and in case of desert-land entries within the exterior limits of any land withdrawal or irrigation project under the Reclamation Act, if final proof of compliance with the homestead or desert-land law, as the case may be, has been previously submitted and has been accepted, or if such final proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation the manager will issue final certificate on the entry. The final certificate so issued must be stamped by the manager when issued as follows: "Subject to the provisions of the act of August 9, 1912 (37 Stat. 265)." The entry, if found to be regular, will be approved by the manager for patent under said act of August

9, 1912, or August 26, 1912 (37 Stat. 610), and patent issued reserving the lien and containing other provisions as in said acts provided.

(2) *On entries other than those under reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges, as provided in the act of August 9, 1962, as amended, in the case of homestead entries, other than those under the Reclamation Act, where a water-right application has been filed by the entryman, and the manager has been notified by the official in charge of the project of the acceptance of such application, if final proof has been accepted on the entry, or final proof is submitted at the time of the receipt of such reclamation proof and is found to be sufficient on examination in the land office, the manager will issue final certificate of compliance with the homestead law. The entry, if found to be regular, will be approved by the manager for patent and final water-right certificate will be issued by the project official in charge, reserving a lien to the Government and its successor for the charges due or to become due.

(3) *Act of May 15, 1922.* Sec. 2 of the act of May 15, 1922 (42 Stat. 542; 43 U.S.C. 512) provides in part as follows:

> That patents and water-right certificates which shall hereafter be issued under the terms of the Act entitled "An Act providing for patents on reclamation entries, and for other purposes," approved August 9, 1912 (37 Stat. 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lien for the payment of such charges; * * *. (Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.8 Flathead Irrigation District, Montana.

§ 2211.8–1 Authority.

The Flathead irrigation project was constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and supplemented by the act of May 10, 1926 (44 Stat. 464), and other acts. Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

(Sec. 15, 35 Stat. 450)

§ 2211.8–2 Requirements and limitations on entries.

(a) *Payment of appraised Indian price of land.* An entrymen for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value, annually thereafter for 5 years beginning 1 year after the date of filing, without interest.

(b) *Acreage limitations.* No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

(c) *Payment of costs.* Persons who enter farm units must pay that part of the cost of building, operating and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

(Sec. 15, 35 Stat. 450)

§ 2211.8–3 Assignment.

(a) *Right to assign.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441) persons who have made or may make homestead entries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Bureau of Land Management of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extends the provisions of the act of June 23, 1910, supra, of the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

(b) *Assignment of part of farm unit.* Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project engineer. The assignment, with accompanying showing by the assignor and assignee, must also be filed with the project engineer for his consideration.

(c) *Filing of instruments of assignment.* No assignment of a farm unit or any part thereof shall be accepted by the Bureau of Land Management, or recognized as valid for any purpose, until after the filing in the land office of the showings and certificates required by paragraph (d) of this section.

(d) *Showing required.* Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, including the act of May 10, 1926 (44 Stat. 464), and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing, in the form of a certificate of the project engineer, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), unless such assignment is purchased with her own money and for her own use and benefit.

(e) *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in paragraph (a) to (d) of this section should be noted on the land office record and, if approved, the assignees in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

(Sec. 15, 35 Stat. 450)

§ 2211.8–4 Surveys; plats.

(a) *Cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special disbursing agent of the project on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(b) *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian

Affairs, Billings, Montana, for formal approval.

(Sec. 15, 35 Stat. 450)

§ 2211.8–5 Mortgages.

(a) *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead entries within the Flathead project may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project engineer in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

(b) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the land office, and be promptly reported to the Area Director, Bureau of Indian Affairs. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof under the act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(c) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until 1 year after the end of the statutory period of redemption, if there be such statutory period; if not, until 1 year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of 1 year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the manager of the land office and to the engineer in charge of the project within 60 days thereafter.

(Sec. 15, 35 Stat. 450)

§ 2211.8–6 Widows, heirs or devisees of entrymen.

(a) *Completion of entries by widows, heirs, or devisees.* The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

(b) *Rights of minor heirs.* Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L.D. 332.) The purchaser and his assignees take subject to the payment of the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

(Sec. 15, 35 Stat. 450)

§ 2211.8–7 Proof.

(a) *Commutation permitted.* These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior.

(b) *Requirements of reclamation proof.* Entrymen, in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit a showing duly corroborated by two witnesses, in duplicate, to the project engineer showing those facts. Thereupon it shall be the duty of the project engineer to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct, he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of Indian Affairs, and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the manager of the land district in which the land is situated, with his report or findings thereon. Where prior to issuance of public notice water has been furnished to entrymen on a water-rental basis, and by means thereof reclamation sufficient to obtain patent under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541–546), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen desiring to obtain patent under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary.

(c) *What constitutes reclamation and cultivation.* To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other encumbrances provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the project engineer of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover, or, (c) a season's growth of orchard trees, or vines, of which 75 percent shall be in a thrifty condition.

(d) *Indian charges, testimony fees, and final commissions.* Upon the submission of proof on entries within the Flathead project, managers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

(e) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Subpart 2033 of this chapter, will be allowed to claim such credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the waterright charges have been met.

(Sec. 15, 35 Stat. 450)

§ 2211.8–8 Final certificates.

(a) *Action on proofs; when final certificate may issue.* If such proof showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the manager, to be sufficient, he will issue final certificate on the entry as provided in paragraph (d)(1) of this section.

(b) *Procedure where proof is not acceptable.* If any proof offered under this law be irregular or insufficient the manager will reject it and allow the entryman the usual right of appeal.

(c) *Acceptance of proof of residence, cultivation, and improvement.* Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the Bureau of Land Management, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation by one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

(d) *Liens*—(1) *Endorsed on final certificate.* (i) Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation, the manager will issue final certificate on the entry. The final certificate so issued must be endorsed by the manager across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)."

(ii) A proviso to the act of May 10, 1926 (44 Stat. 465) provides: That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien.

(2) *Release of lien.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all buildings and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

(Sec. 15, 35 Stat. 450)

§ 2211.8–9 Cancellation of entries.

All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled.

(Sec. 15, 35 Stat. 450)

§ 2211.9 Alaska.

§ 2211.9–1 Homestead settlement entry.

(a) *Lands subject to settlement and homestead entry.* (1) All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

(2) The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U.S.C. 371), July 8, 1916 (39 Stat. 352; 48 U.S.C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U.S.C. 373–375, 378), April 13, 1926 (44 Stat. 243; 48 U.S.C. 379, 380, 380a), and July 11, 1956 (70 Stat. 528; 48 U.S.C. 371c and 375).

(b) *Form of settlement on unsurveyed land.* A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243; 48 U.S.C. 379, 380, 380a). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly extended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

(c) *Notice of settlement.* (1) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the land office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(2) Any person maintaining a settlement claim on April 29, 1950, on surveyed or unsurveyed public land, shall file notice of the initiation of the claim in the land office for the district in which the land is situated, (1) within 90 days from that date, if the notice of location had not theretofore been filed in the recording district, or (2) within two years from April 29, 1950, if notice of the location had theretofore been filed in the recording district.

(3) The notice must be filed on a form approved by the Director, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (a) The name and address of the settler, (b) age and citizenship; (c) date of settlement, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(4) Unless a notice of the claim is filed within the time prescribed in paragraphs (e) and (d) of this section, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

(d) *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00 which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to homestead settlement.

(e) *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (1) A settler on unsurveyed land is required to mark the claim by permanent monuments at

each corner, in order to establish the boundaries thereof.

(2) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

(f) *Law under which homestead must be perfected.* All homestead claims in Alaska must be perfected under and in accordance with the provisions of the 3-year homestead law of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), and regulations thereunder.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–2 Application.

(a) *Form.* Application to make homestead entry for lands in Alaska should be presented on a form approved by the Director, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

(b) *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(1) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 2024.2 of this subchapter.)

(2) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 2321.1–2(c) of this chapter.

CROSS REFERENCES: For Indian and Eskimo allotments, § 2212.9; for school indemnity selections § 2222.9; for shore space, Subpart 2024; for soldier's additional rights, § 2221.9; for trade and manufacturing sites, Subpart 2213.

(c) *Contents.* (1) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(2) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

(d) *Service charges.* (1) When a homesteader applies to make entry he must pay an application nonrefundable service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the Act of May 14, 1880 (21 Stat. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(2) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–3 Acreage.

(a) *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

(b) *Limitations.* The act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–4 Qualifications of entryman.

(a) *Qualifications required.* Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, Revised Statutes (43 U.S.C. 161, 171), is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that State for not exceeding 160 acres.

(b) *Second entries.* No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in § 2211.5–1 (a) to (d) of this chapter.

(c) *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 2211.4–1 and 2211.4–2 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–5 Residence, cultivation requirements.

(a) *Residence*—(1) *Establishment.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

(2) *Length.* A homestead entryman must show residence upon his claim for at least 3 years; however, he is entitled to absent himself during each year for not more than two periods making up an aggregate of 5 months, giving written notice to the proper land office of the time of leaving the homestead and returning thereto.

(3) *Leave of absence.* A leave of absence for 1 year or less may be granted by the manager to the homesteader who has established actual residence on the land where failure or destruction of crops, sickness, or other unavoidable casualty has prevented him from supporting himself and those dependent upon him by cultivation of the land.

(b) *Cultivation.* There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application

duly filed. Cultivation, which must consist of breaking of the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

(c) *Habitable house.* The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

(d) *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment of $1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), is not subject to commutation.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–6 Surveys.

(a) *Without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the land office, an application to enter on a form approved by the Director and acceptable final or commuted homestead proof as required by § 2211.9–7(a).

(b) *At expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

(c) *Application to enter land included in special survey.* After a special survey has been made, in accordance with paragraph (b) of this section, application to enter should be made as in the case of other settlements on surveyed lands.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–7 Proof.

(a) *Submission.* (1) Proof may be submitted without previous notice of intention by publication.

(2) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the manager of the land office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the proper land office.

(b) *Publication and posting.* (1) Where a special survey has been made, the notice of proof must give the survey number of the land, and other information required by § 1824.9–1 of this chapter and it must be published once a week for nine consecutive weeks, in accordance with § 1824.4 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(2) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 1824.4 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

(c) *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the State transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

(d) *Adverse claim.* (1) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the land office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(2) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(3) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the manager in accordance with Parts 1840 and 1850 of this chapter.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–8 Loans.

(a) *Mortgage loans on existing homestead entries.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III secs. 1006a, 1006b), should proceed in accordance with § 2211.0–9(a) of this chapter.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

Subpart 2212—Native Allotments

AUTHORITY: The provisions of this Subpart 2212 issued under R.S. 2478; 43 U.S.C. 1201. Also issued under 84 Stat. 197, 48 U.S.C. 357.

§ 2212.0–3 Authority.

(a) *General Allotment Act of February 8, 1887.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the act of February 28, 1891 (26 Stat. 794), and section 17 of the act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 336), provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

(b) *Act of March 1, 1933.* The act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

Public land withdrawn by Executive Order 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See Subpart 2411 of this chapter.

(c) *Act of May 17, 1906 (Alaska).* (1) The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), of vacant, unappropriated,

and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to certain Indians, Aleuts, or Eskimos of full or mixed blood, who reside in and are natives of Alaska.

(2) Under the Allotment Act, as amended, an applicant for allotment must be at least 21 years of age or the head of a family.

(3) Under the terms of the Allotment Act, as amended, the land allotted is deemed to be the homestead of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. An Indian, Aleut, or Eskimo who receives an allotment under the act, or his heirs, however, may with the approval of the Secretary, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is an Indian, Aleut, or Eskimo native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

§ 2212.0–6 Qualifications of applicants.

(a) *General.* An applicant for allotment under the fourth section of the act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

(b) *Certificate that applicant is Indian and entitled to allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and entitled to such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2212.1–1(b).

(c) *Heirs of Indian settlers and applicants.* (1) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(2) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(3) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

(d) *Minor children.* An Indian settler on public lands under the fourth section of the act of February 8, 1887, as amended, is also entitled upon application to have allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one entitled himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not entitled to allotments on the public domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

(e) *Indian wives.* (1) Where an Indian woman is married to a white man or other person not entitled to an allotment under the fourth section of the act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such women and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(2) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise entitled, and also for her minor children where her husband is for any reason disqualified.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

(f) *Citizenship.* (1) Under section 6 of the act of February 8, 1887 (24 Stat. 390; 25 U.S.C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(2) The act of May 8, 1906 (34 Stat. 182; 8 U.S.C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(3) The act of June 2, 1924 (43 Stat. 253, 8 U.S.C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

§ 2212.0–7 Land subject to allotment.

(a) *General.* (1) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(2) Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

(3) Where an Indian makes settlement in good faith upon lands not reserved therefrom, an allotment therefor can not be denied on the ground that the lands are too poor in quality. Also, where settlement was made in good faith, the presence of valuable timber does not warrant the rejection of the allotment.

(4) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

(b) *In Alaska*—(1) *National forest lands.* Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(2) *Coal, oil, or gas lands.* Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2023.5 of this chapter.

§ 2212.1 Procedures.

§ 2212.1–1 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see § 2212.2–3 of this part) must file with the manager of the land office for the district in which the land is situated, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and entitled to allotment, as specified in § 2212.0–6(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

§ 2212.1–2 Contents of application.

(a) The nature, character, and extent of the settlement, as well as the manner in which performed, must be fully set forth in the allotment application. In examining the acts of settlement and determining the intention and good faith of an Indian applicant, due and reasonable consideration should be given to the habits, customs, and nomadic instincts of the race, as well as to the character of the land taken in allotment.

(b) While the act contains no specific requirements as to what shall constitute settlement, it is evident that the Indian must definitely assert a claim to the land based upon the reasonable use or occupation thereof consistent with his mode of life and the character of the land and climate.

§ 2212.1–3 Effect of application.

(a) An allotment application under the fourth section of the act of February 8, 1887, as amended, filed prior to September 23, 1913, does not, in the absence of a certificate from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and subsequent applications for the same land may be received and suspended to await final action on the allotment application.

(b) Where an allotment application under the fourth section, filed subsequent to September 23, 1913, is not accompanied by the requisite certificate from the Indian Office showing the applicant to be entitled to allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(c) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

§ 2212.1–4 Application for unsurveyed lands.

(a) An allotment application under the fourth section of the act of February 8, 1887, as amended, for unsurveyed lands must conform to the following rules along the lines of those found in § 1821.7–1 of this chapter.

(1) It must contain a description of the land by metes and bounds, with courses, distances, and references to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass, unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or objects need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, watercourses, or other natural objects will not be permitted.

(2) An allotment to a minor child need not be contiguous to that made by the head of a family; but it is required that each allotment made to an individual, whether the head of a family, a single adult, or a minor child, when such allotment embraces more than one legal subdivision, must be composed of contiguous tracts, as in ordinary disposition of the public domain under a settlement law. An additional allotment must be governed by the same rule.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished, or if this cannot be done, a statement must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 90 days. In default of action by the party notified, the manager will promptly adjust the claim to the public land survey, if possible.

(d) Notice of the application describing the land as above directed must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application.

§ 2212.2 Allotments.

§ 2212.2–1 Certificate of allotment.

(a) When the manager approves an application for allotment, he will issue to the applicant a "certificate of allotment", on a prescribed form, showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

§ 2212.2–2 Trust patent.

(a) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued, will run from the date of suspension.

(b) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

§ 2212.2–3 Allotments within national forests.

(a) By the terms of section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests.

(b) An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

(c) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(d) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

(e) The application must be filed with the manager of the land office for the district in which the land applied for is located. He will then forward the case to the Bureau of Indian Affairs for consideration. If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

(f) The provisions of said section are not limited to Indians occupying, living on, or having improvements on lands within a national forest at the date of the passage of the act, but apply also to Indians whose settlement, occupation, or improvements occurred subsequent to the passage of the act.

(g) The listing and opening to entry of lands under the provisions of the Forest Homestead Act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), do not preclude their being taken as an allotment under section 31.

(h) An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the act of February 8, 1887, as amended, apply equally to applications under said section 31.

§ 2212.3 Adverse actions.

§ 2212.3–1 Charges and protests against Indian allotments.

(a) The act of April 23, 1904 (33 Stat. 297; 25 U.S.C. 343), limits the jurisdiction of the Secretary of the Interior to cancel first or trust patents issued on Indian allotments to specific instances, without authority from Congress. In view of the fact that information respecting the classes defined in said act is obtainable from the records of the Department of the Interior no charges preferred as to those classes will be entertained. Third parties are never invited to attack Indian allotments with the hope or expectation of securing any advantage by reason of such attack. Such parties must assume and pay the expense of a hearing, but at the same time they acquire no preference right to enter the land in the event of the cancellation of the allotment, and this whether first or trust patent has issued or not. Section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), does not apply to proceedings of this character.

(b) However, where a party claims equitable rights to lands covered by an Indian allotment for which trust patent has been issued, on account of prior settlement and improvements, a hearing may be ordered with the view of recommending to Congress that such patent be cancelled, if the showing made at the hearing justifies such action. In this class of cases, and in cases of charges preferred against allotments on which trust patents have not issued, the following rules will be observed:

(1) The charges must be filed in the proper land office in the form of a duly corroborated affidavit, clearly setting forth the specific grounds for such charges. The manager will give the Bureau of Indian Affairs full information thereof.

(2) Where it is charged that the lands applied for are not of the character subject to allotment, that the required settlement has not been made, that the contestant has a prior and better claim, and that the applicant for allotment is not seeking to obtain the land in good faith but is acting in the interest of another person not entitled thereto, the State Director will cause a preliminary investigation to be made as to the truth and merits of the charges, if such action is deemed necessary. The charges will be dismissed unless they appear to be probably true.

(3) If sufficient showing is made, a hearing will be had before the proper land officer after due notice to all parties. The taking of testimony and other proceedings in such hearings will be in accordance with Parts 1840 and 1850 of this chapter, governing proceedings before the manager.

(c) Nothing in the foregoing will prevent the Department from accepting an Indian's relinquishment of an unpatented allotment and directing its cancellation if, after the charges are filed, it is shown that the allotment ought to be canceled.

(d) Third parties are not privileged to intervene in proceedings to determine whether lands applied for are of the character subject to allotment or as to the right of the Indian to an allotment as this is a matter resting solely in the judgment of the Department.

§ 2212.3–2 Notice of action.

Notice to Indian allottees, or to their parents, if minors, of any action adverse to their interests must be given by registered letter to the proper Indian superintendent, as well as to the party in interest.

§ 2212.4 Disposal of trust allotments.

The existing laws and regulations relating to the sale of allotted Indian lands, the determination of heirs, the issuance of patents in fee, the disposal of trust allotments by will, and the extension of the trust period, applicable to reservation allotments under the provisions of the act of February 8, 1887, as amended, are equally applicable to allotments made under the fourth section of said act.

§ 2212.5 Relinquishments.

(a) Relinquishments of Indian allotments, if filed in a land office, will be transmitted to the Commissioner of Indian Affairs for consideration and recommendation. Where the application has not been approved, the Commissioner of Indian Affairs has authority to accept or reject the relinquishment, as he may deem proper. Where the allotment application has been approved, the acceptance or rejection must be concurred in by the Commissioner of Indian Affairs. On the acceptance of a relinquishment, the Bureau of Land Management will be notified of the fact. The land affected will not become subject to entry until after the manager has noted the fact of the relinquishment and cancellation on his records.

(b) The manager will, in case of a relinquishment, filed by an Indian, of an allotment application, or of a homestead entry, under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), require the party to write at the foot of the regular form provided for relinquishments, or upon the back thereof, a clear statement of his reasons for desiring to make such relinquishment.

§ 2212.9 Alaska.

§ 2212.9–1 Applications.

(a) Applications for allotment must be filed, in triplicate on a form approved by the Director, properly and completely executed, in the land office which has jurisdiction over the lands. The application must be signed by the applicant but if he is unable to write his name, his mark or thumb print must be impressed on the application and witnessed by two persons.

(b) If surveyed, the land must be described in the application according to legal subdivisions of the public land surveys. If unsurveyed, it must be described as accurately as possible by metes and bounds and natural objects, and its position with reference to rivers, creeks, mountains or mountain peaks, towns or other prominent topographic points or natural objects or monuments, and to well-known nearby roads and trails, must be given.

(c) The application must be accompanied by a statement by the applicant that he has plainly indicated on the ground the corners of the land applied for by setting substantial posts or heaping up mounds of stones on each corner and that he has posted a notice of the application on the land, describing the tract applied for in the terms employed in the application.

(d) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters must be accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the 160-rod limitation. (See Subpart 2024.)

(e) Applications for allotment will be referred by the Bureau of Land Management to the Bureau of Indian Affairs for certification by an authorized officer that the applicant is a native qualified to make application under the Allotment Act, as amended. If the application is returned without such a certification, the application will be rejected.

(f) The filing of an application for allotment will grant no rights to the applicant over and above those which are specified in paragraph (g) of this section and § 2012.9–3. If the applicant does not submit the proof required by § 2212.9–2 within 6 years of the filing of his application in the land office, his application for allotment will terminate without affecting the rights of the applicant gained by virtue of his occupancy of the land, or his rights to make another application. If the application was filed prior to the effective date of this paragraph, the application will be

terminated under this paragraph only by decision of the authorized officer after appropriate notice to the applicant, granting him a reasonable period within which to file proof of continuous use and occupancy of the land as required by the regulation in this part.

(g) The filing of an acceptable application for allotment will segregate the lands to the extent that conflicting applications for such lands will be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned occupancy of the land.

§ 2212.9–2 Proof.

An allotment will not be made until the applicant has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years and the lands are surveyed by the Bureau of Land Management. Such proof must be made in triplicate and filed in the appropriate land office. It must be signed by the applicant, but if he is unable to write his name, his mark or thumbprint must be impressed on the statement and witnessed by two persons. The showing of five years' use and occupancy may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or at any time after the filing of the application when the required showing can be made. The proof should give the name of the applicant, identify the application on which it is based, and appropriately describe the land involved. It should show the periods each year applicant has resided on the land; the amount of the land cultivated each year to garden or other crops; the amount of crops harvested each year; the number and kinds of domestic animals kept on the land by the applicant and the years they were kept there; the character and value of the improvements made by the applicant and when they were made; and the use, if any, to which the land has been put for fishing or trapping.

§ 2212.9–3 Number of allotments; contiguity.

(a) No more than one allotment may be made to any one person.

(b) Lands in an allotment must be in a reasonably compact form and cannot consist of incontiguous tracts of land.

§ 2212.9–4 Approval of conveyances.

Applications for approval of conveyances by an allottee or his heirs must be filed with the appropriate office of the Bureau of Indian Affairs.

Subpart 2213—Trade and Manufacturing Sites

AUTHORITY: The provisions of this Subpart 2213 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2213.0–3 Authority.

Section 10 of the act of May 14, 1898 (30 Stat. 413, as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 461), authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site. The lands must be nonmineral in character, except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), as amended, and the regulations of § 2023.5 of this chapter.

§ 2213.0–6 Qualifications of applicant.

An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

§ 2213.1 Procedures.

§ 2213.1–1 Initiation of claim.

(a) *Notice.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper land office, within 90 days from that date.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of occupancy, and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufacture, or other productive industry in connection with which the site is maintained or desired.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

(d) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording, because the land is not subject to the form of disposition specified in the notice.

§ 2213.1–2 Application.

(a) *Execution.* Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper land office. It need not be sworn to, but it must be signed by the applicant and must be corroborated by the statements of two persons.

(b) *Fees.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(d) *Contents.* The application to enter must show:

(1) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 461).

(2) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(3) That the land does not abut more than 80 rods of navigable water.

(4) That the land is not included within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, in accordance with § 2321.1–2(c) of this chapter.

(5) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(e) *Description of land.* If the land be surveyed, it must be described in the application according to legal subdivisions of the public-land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without survey.

§ 2213.1–3 Survey.

If the land applied for be unsurveyed and no objection to its survey is known to the manager, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the State Director officer for the survey of the land. The instructions governing survey in connection with applications for soldiers' additional homestead entries, as set forth in § 2221.9–4 (d) of this chapter, will be followed in connection with trade and manufacturing sites.

§ 2213.1–4 Publication and posting; adverse claim.

The instructions given in § 2221.9–4(e) of this chapter, relative to publication and posting, adverse claims and proof of publication and posting in connection with applications for soldiers' additional homestead entries will be followed in connection with trade and manufacturing sites.

§ 2213.2 Form of entry.

Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

§ 2213.3 Final certificate.

The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and final certificate issued upon payment for the land at the rate of $2.50 per acre, and in the absence of objections shown by his records.

Subpart 2214—Color-of-Title

AUTHORITY: The provisions of this Subpart 2214 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2214.0–3 Authority.

(a) *Act of December 22, 1928.* The act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068, 1068a), authorizes the issuance of patent for not to exceed 160 acres of public lands held under claim or color of title of either of the two classes described in § 2214.1–1(b) upon payment of the sale price of the land.

(b) *Act of February 23, 1932.* The act of February 23, 1932 (47 Stat. 53; 43 U.S.C. 178), authorizes the Secretary of the Interior in his discretion to issue patents, upon the payment of $1.25 per acre, for not more than 160 acres of public land, where such land is contiguous to a Spanish or Mexican land grant, and where such land has been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years under claim or color of title and where valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation. The act further provides that where the land is in excess of 160 acres, the Secretary may determine the 160 acres to be patented under the act. Under the said act the coal and all other minerals in the land are reserved to the United States and shall be subject to sale or disposal under applicable leasing and mineral land laws of the United States.

(c) *Act of September 21, 1922.* The act of September 21, 1922 (42 Stat. 992; 43 U.S.C. 992), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Arkansas, which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who in good faith under color of title or claiming as a riparian owner, has prior to September 21, 1922, placed valuable improvements on such land or reduced some part thereof to cultivation.

(d) *Act of February 19, 1925.* The act of February 19, 1925 (43 Stat. 951; 43 U.S.C. 993), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Louisiana, which were originally erroneously meandered and shown upon the official plats as water-covered areas and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who, or whose ancestors in title in good faith under color of title or claiming as a riparian owner, has prior to February 19, 1925, placed valuable improvements upon or reduced to cultivation any of such lands. The coal, oil, gas, and other minerals in such lands are reserved to the United States.

(e) *Act of August 24, 1954.* The act of August 24, 1954 (68 Stat. 789), directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, under certain terms and conditions. The act of February 27, 1925 (43 Stat. 1013; 43 U.S.C. 994), authorized the Secretary of the Interior to sell such public lands under certain other terms and conditions. These acts are cited as "the act of 1954" and "the act of 1925," respectively, in §§ 2214.5–1 to 2214.5–4.

(f) *Act of May 31, 1962.* (1) The act of May 31, 1962 (76 Stat. 89), hereafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to sell at not less than their fair market value any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries, which have been, or may be, found upon survey to be omitted public lands of the United States, and which are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

(2) The Act provides that in all patents issued under the Act, the Secretary of the Interior (i) shall include a reservation to the United States of all the coal, oil, gas, oil shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen, and bitumen rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same; and (ii) may reserve the right of access to the public through the lands and such other reservations as he may deem appropriate and consonant with the public interest in preserving public recreational values in the lands.

(3) The Act further provides that the Secretary of the Interior shall determine the fair market value of the lands by appraisal, taking into consideration any reservations specified pursuant to subparagraph (2) of this section and excluding, when sales are made to preference-right claimants under section 2 of the Act, any increased values resulting from the development or improvement thereof for agricultural or other purposes by the claimant or his predecessors in interest.

(4) The Act grants a preference right to purchase lands which are offered by the Secretary of the Interior for sale under the Act to any citizen of the United States (which term includes corporations, partnerships, firms, and other legal entities having authority to hold title to lands in the State of Idaho) who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation or occupied any of the lands so offered for sale, or whose ancestors or predecessors in title have taken such action.

§ 2214.1 General regulations.

§ 2214.1–1 Definition.

(a) "The act", when used in this section means the act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068, 1068a), as amended by the act of July 28, 1953 (67 Stat. 227, 43 U.S.C. 1068a).

(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

§ 2214.1–2 Who may apply.

Any individual, group, or corporation authorized to hold title to land in the State and who believes he has a valid claim under color of title may make application.

§ 2214.1–3 Procedures.

(a) *Application.* (1) An application for a claim of class 1 or of class 2 must be filed in duplicate on a form approved

by the Director. It must be filed in accordance with the provisions of § 1821.2 of this chapter.

(2) Every application must be accompanied by a filing fee of $10, which will be nonreturnable.

(3) The application must be in typewritten form, or in legible handwriting, and it must be completely executed and signed by the applicant.

(4) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters.

(b) *Description of lands applied for.* Application under the act may be made for surveyed or unsurveyed lands. If unsurveyed, the description must be sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. If unsurveyed land is claimed, final action will be suspended until the plat of survey has been officially filed.

(c) *Presentation and verification of factual statements.* (1) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on a form approved by the Director. The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant.

(2) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on a form approved by the Director which must be certified by the proper county official or by an abstractor.

§ 2214.1–4 Patents.

(a) Any applicant who satisfied all requirements for a claim of class 1 or class 2 commencing not later than January 1, 1901, to the date of aplication and who so requests in the application will receive a patent conveying title to all other minerals except:

(1) Any minerals which, at the time of approval of the application, are embraced by an outstanding mineral lease or

(2) Any minerals for which the lands have been placed in a mineral withdrawal.

All other patents will reserve all minerals to the United States.

(b) All mineral reservations will include the right to prospect for, mine, and remove the same in accordance with applicable law.

(c) The maximum area for which patent may be issued for any claim under the act is 160 acres. Where an area held under a claim or color of title is in excess of 160 acres, the Secretary has authority under the act to determine what particular subdivisions not exceeding 160 acres, may be patented.

§ 2214.1–5 Price of land; payment.

(a) *Price of land.* The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than $1.25 per acre.

(b) *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 2214.1–6 Publication; protests.

(a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 1824.4 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the office specified in § 2214.1–3(a) their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2214.2 Color of title claims, New Mexico, contiguous to Spanish or Mexican grants.

§ 2214.2–1 Application.

(a) *Where filed; purchase price required.* Applications under the act of February 23, 1932 must be filed with the manager of the land office at Santa Fe, New Mexico, and should be accompanied by payment of the purchase price of the land applied for at the rate of $1.25 per acre.

(b) *Form.* No special form of application is provided. The application should be in typewritten form or in legible handwriting and must be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein.

(c) *Contents of application.* Applicants desiring to take advantage of the benefits of the act of February 23, 1932, must show the following matters in their applications:

(1) Full name and post-office address of the applicant and whether married or single.

(2) Description of the land for which patent is desired. If surveyed, the land should be described by legal subdivision, section, township, and range. If unsurveyed, the land should be described by metes and bounds.

(3) That the land applied for is contiguous to a Spanish or Mexican land grant. The grant should be identified by name, number, patentee or description of land involved. The points or places at which the land applied for is contiguous to the Spanish or Mexican land grant, must be clearly shown.

(4) That possession of the lands applied for has been maintained for more than 20 years under claim or color of title. If the applicant is claiming as a record owner, he or she will be required to file an abstract of title, certified to by a competent abstractor, showing the record of all conveyances of the land up to the date of the filing of the application. If the applicant is not a record owner and no abstract of title can be furnished, statements must be filed, setting forth the names of all mesne possessors of the land, the periods held by each, giving the dates and manner of acquiring possession of the land, and the acts of dominion exercised over the land by each possessor.

(5) That the lands have been held in good faith and in peaceful, adverse possession. The applicant should show whether or not he and his predecessors in interest have paid taxes on the lands and for what periods of time, and whether any consideration was paid for any conveyances of the land. It should further be shown whether there is any person who is claiming the land adversely to the applicant, and if there be such, the name and address of such adverse claimant should be furnished.

(6) Whether or not valuable improvements have been erected upon the land applied for and whether or not any part of such land has been reduced to cultivation. If improvements have been made, the nature, the value, the exact location, and the time of erection thereof, should be fully disclosed together with the identity of the one who was responsible for erecting such improvements. If any of the land has been reduced to cultivation, the subdivision so claimed to have been reduced must be identified and the amount and nature of the cultivation must be set forth, together with the dates thereof.

§ 2214.2–2 Evidence required.

(a) *Citizenship.* The applicant must furnish a statement showing whether such applicant is a native-born or naturalized citizen of the United States. In the event an applicant is a naturalized citizen, the statement should show the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and when available, the number of the document in question, if the proceeding has been had since September 26, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which the applicant was a citizen or subject. In case the applicant is a corporation, a certified copy of the articles of incorporation should be filed.

(b) *Acreage claimed.* The applicant in the statement required under paragraph (a) of this section must show that the land claimed is not a part of a claim which embraced more than 160 acres on February 23, 1932. If the land claimed is part of a claim containing more than 160 acres, a full disclosure of all facts concerning the larger claim must be furnished.

§ 2214.2–3 Publication and posting of notice.

(a) If upon consideration of the application it is determined that the applicant is entitled to purchase the land applied for, the applicant will be required to publish notice of the application in a newspaper of general circulation in the county wherein the land applied for is situated. Notice for publication shall be issued in the following form:

Land Office,
Santa Fe, New Mexico.

Notice is hereby given that _____
(Name of applicant)
of _____, has filed applica-
(Address)
tion _____,
(Number and land office)
under the act of February 28, 1932 (47 Stat. 53), to purchase _____,
(Land)
Sec. ____, T. ____, R. ____, _____ Mer., claiming under _____.
(Ground of claim)

The purpose of this notice is to allow all persons having bona fide objection to the proposed purchase, an opportunity to file their protests in this office on or before _____.
(Date)

_____
(Manager)

(b) The notice shall be published at the expense of the applicant and such publication shall be made once each week for a period of five consecutive weeks. A copy of the notice will be posted in the land office during the entire period of publication. The applicant must file evidence showing that publication has been had for the required time, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice as published.

§ 2214.2–4 Final certificate.

(a) Upon submission of satisfactory proof of publication and the expiration of the time allowed for the filing of objections against the application, if there be no protest, contest or other objection against the application, final certificate will then be issued by the manager.

(b) There will be incorporated in patents issued on applications under the above act, the following:

Excepting and reserving, however, to the United States, the coal and all other minerals in the land so patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said lands for the purpose of prospecting for and mining such deposits as provided for under the act of February 23, 1932 (47 Stat. 53).

§ 2214.3 Erroneously meandered lands, Arkansas.

§ 2214.3–1 Applications.

(a) Applications to purchase under the act of September 21, 1922, must be signed by the applicant in the State of Arkansas. Such applications had to be filed within 90 days from the date of the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plats. The applicant must show that he is either a native-born or naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based, and that the applied-for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation had, if any, and how long continued. This application must be supported by the statements of two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2214.3–2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act of September 21, 1922.

§ 2214.3–3 Purchase price required.

If upon consideration of the application it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified by registered mail that he must within 30 days from service of notice deposit the appraised price, or thereafter, and without further notice, forfeit all rights under his application.

§ 2214.3–4 Publication and posting.

Upon payment of the appraised price a notice of publication will be issued. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elaspe between the date of last publication and date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau of Land Management will cause a notice similar to the notice for publication to be posted in such office, during the entire period of publication. The publisher of the newspaper must file in the Bureau of Land Management prior to the date fixed by the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice published.

§ 2214.3–5 Final certificate.

Upon submission of satisfactory proof, if no protest or contest is pending, final certificate will be issued.

§ 2214.4 Erroneously meandered lands, Louisiana.

§ 2214.4–1 Applications.

(a) Applications to purchase under the act of February 19, 1925, must be signed by the applicant in the State of Louisiana. Such applications had to be filed within 90 days from the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plat. The applicant must show that he is either a native-born or a naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of the title his claim is based; in other words, a complete history of the claim, and that the lands applied for are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation, if any, and how long continued. Such application must be supported by the statement of at least two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2214.4–2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act.

§ 2214.4–3 Notice to deposit purchase price.

If, upon consideration of the application, it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified, by registered mail, that he must within 6 months from receipt of notice deposit the appraised price of the land or else forfeit all his rights under his application.

§ 2214.4–4 Publication and posting.

Upon payment of the appraised price of the land the Bureau will issue notice of publication. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands, once a week for five consecutive weeks, in accordance with § 1824.4 of this chapter, immediately prior to the date of sale, but a sufficient time shall elapse between the date of the last publication and the date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed.

Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau will also cause a copy of such notice of publication to be posted in such office during the entire period of publication. The applicant must file in the Bureau prior to the date fixed for the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher accompanied by a copy of the notice so published.

§ 2214.4–5 Final certificate.

Upon the submission of satisfactory proof, the Bureau will, if no protest or contest is pending, issue final certificate, such certificate to contain a stipulation that all the minerals in the lands described in the application are reserved to the United States with the right to prospect for, mine and remove same.

§ 2214.5 Erroneously meandered lands, Wisconsin.

§ 2214.5–1 Qualifications of applicants.

(a) To qualify under the act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

(b) To qualify under the act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had, prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such public lands.

§ 2214.5–2 Applications.

(a) Claimants under the act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the act of 1954 must be filed within one year after August 24, 1954, or one year from the date of the official plat or resurvey, whichever is later. All applications must be filed in duplicate with the Bureau of Land Management, Washington 25, D.C.

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the applicant.

(2) The legal description and acreage of the public lands claimed or desired.

(3) The legal description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired. If the claim is based on ownership of such adjoining lands, the application must be accompanied by a certificate from the proper county official or by an abstractor, showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) If the applicant is a color-of-title applicant under the act of 1925, a statement whether or not the applicant is a citizen of the United States.

(5) If the application is based on color of title or riparian claim under the act of 1925, a statement fully disclosing the facts of the matter; or if the application is based on peaceful, adverse possession under the act of 1954, a similar statement showing peaceful, adverse possession by the applicant, or his predecessors in interest, since the issuance of the patent to the lands adjoining the claimed lands.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation, if any, of the lands applied for, including the nature, location, and dates of such cultivation.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands applied for or claimed.

(9) The names and post office addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2214.5–3 Publication and protests.

(a) The applicant will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the Bureau of Land Management, Washington, D.C., their objections to issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2214.5–4 Price of land; other conditions.

(a) Persons entitled to a patent under the act of 1954 must, within 30 days after request therefor, pay, under the same terms and conditions, the same price per acre as was paid for the land included in their original patent.

(b) Persons entitled to a patent under the act of 1925, within 30 days after request therefor, must pay the appraised price of the lands, which price will be the value of the lands as of the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands for agricultural purposes by the applicant or his predecessors in interest but inclusive of the stumpage value of any timber cut or removed by them.

§ 2214.6 Snake River, Idaho, omitted lands.

§ 2214.6–1 Offers of lands for sale.

Before any lands may be sold under the Act, the authorized officer of the Bureau of Land Management shall publish in the FEDERAL REGISTER and in at least one newspaper of general circulation within the State of Idaho a notice that the lands will be offered for sale, which notice shall specify a period of time not less than 30 days in duration during which citizens may file with the land office at Boise, Idaho, a notice of their intention to apply to purchase all or part of the lands as qualified preference-right claimants.

§ 2214.6–2 Applications for purchase.

(a) All citizens who file a notice of intention in accordance with § 2214.6–1 within the time period specified in the published notice or any amendment thereof will be granted by the authorized officer a period of time not less than 30 days in duration in which to file, in duplicate with the Manager of the Boise Land Office, their applications to purchase lands as preference-right claimants.

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the claimant.

(2) The description and acreage of the public lands claimed or desired.

(3) The description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired, accompanied by a certificate from the proper county official or by an abstractor or by an attorney showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) A statement showing that the claimant is a citizen of the United States, as defined in subparagraph (4) of § 2214.0–3(f).

(5) A statement giving the basis for color of title or claim of riparian ownership.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation and occupancy, if any, of the lands applied for, including the nature, location, and date of such cultivation and occupancy.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands claimed.

(9) The names and addresses of at least two disinterested persons having

knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2214.6–3 Payment and publication.

(a) Before lands may be sold to a qualified preference-right claimant, the claimant will be required to pay the purchase price of the lands and will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons having objections to file with the Manager of the Land Office at Boise, Idaho, their objections to issuance of patent to the claimant. A protestant must serve on the claimant a copy of the objections and must furnish the Manager with evidence of such service.

(b) Among other things, the notice will describe the lands to be patented, state the purchase price for the lands, and the reservations, if any, to be included in the patent to preserve public recreational values in the lands.

(c) The claimant must file a statement of the publisher, acompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2214.6–4 Public auctions.

(a) The authorized officer may sell under the Act at public auction any lands for which preference-claimants do not qualify for patents under the regulations of §§ 2214.0–3(f) and 2214.6.

(b) Lands will be sold under this section at not less than their appraised fair market value at the time and place and in the manner specified by the authorized officer in a public notice of the sale.

(c) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(d) A bid sent by mail must be received at the place and within the time specified in the public notice. Each such bid must clearly state (1) the name and address of the bidder and (2) the specified tract, as described in the notice for which the bid is made. The envelope must be noted as required by the notice.

(e) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid.

(f) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared the purchaser.

Subpart 2215—Mining Claim Occupancy Act

AUTHORITY: The provisions of this Subpart 2215 issued under Act of October 23, 1962 (70 Stat. 1127) and 43 U.S.C. 2, 1201, 1371.

§ 2215.0–2 Objectives.

(a) The program of the Secretary of the Interior in the administration of the Act is to grant to qualified applicants maximum tenure consistent with the public interest in the lands which they occupy. Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, provided that, where paragraph (b) of § 2215.0–3 is applicable, tenure shall also be consistent with the terms and conditions specified by the agency or department in aid of whose function the lands are used. The right to purchase an alternate tract will ordinarily be granted a qualified applicant where the consent mentioned in paragraph (b) of § 2215.0–3 is required but not given and the other requirements of that paragraph are satisfied.

(b) In determining the price for the interest to be conveyed under the Act, the Secretary of the Interior will weigh and evaluate the equities claimed by the applicant and will also give consideration to other equities which his investigation may reveal.

§ 2215.0–3 Authority.

(a) The Act of October 23, 1962 (76 Stat. 1127), hereinafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to convey to any qualified applicant who is an occupant of an unpatented mining claim which is determined by the Secretary to be invalid, an interest, up to and including a fee simple, in and to an area within the claim of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less. The Act permits the Secretary to make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Such conveyances may be made only to a qualified applicant who applies therefor within 5 years from October 23, 1962, and upon payment of an amount established in accordance with the Act.

(b) The Act further provides that when the qualified applicant applies for lands which have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. Where such consent is not given, the Act permits the Secretary, after arrangements satisfactory to the Secretary have been made for termination of the applicant's occupancy of his unpatented mining claim and for settlement of any liability for the unauthorized use thereof which may have been incurred, to grant the applicant a right to purchase, for residential use, an interest in another tract made available by him for sale under the Act (1) from unappropriated and unreserved lands of the United States or (2) from lands subject to classification under section 7 of the Taylor Grazing Act (48 Stat. 1272, 43 U.S.C. 315f), as amended, said right to expire within 5 years from the date on which it is granted, unless sooner exercised.

(c) The Act requires the Secretary, prior to any conveyance under the Act, to determine the fair market value, as of the date of appraisal, of the interest to be conveyed exclusive of the value of any improvements placed on the lands by the applicant or his predecessors in interest. It also requires him, in establishing the purchase price to be paid by the applicant, to take into consideration any equities of the applicant and his predecessors in interest, including conditions of prior use and occupancy, the price never to exceed its fair market value nor to be less than $5 per acre and to be payable, in the discretion of the Secretary, in a lump sum or in installments.

(d) The Act provides that all conveyances thereunder shall reserve to the United States all mineral interests of the United States in the lands conveyed for the term of the estate. It withdraws from all forms of entry and appropriation, for the term of the estate conveyed, reserve minerals locatable under the mining laws or disposable under the Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601–604, as amended). It permits the Secretary to lease, under the mineral leasing laws, reserved oil, gas, and other leasable minerals for exploration and development purposes, but without the right of surface ingress or egress.

(e) The Act provides that the execution of any conveyance thereunder does not relieve an applicant of any liability, existing on the date of the conveyance, to the United States, for unauthorized use of the land in and to which an interest is granted. However, it provides that, with respect to persons who file applications for conveyance pursuant to the Act within 5 years of October 23, 1962, trespass charges shall not be sought or collected from any qualified applicant who has filed an application for land in the mining claim pursuant to the Act, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary or the voluntary relinquishment of the mining claim, whichever occurs earlier, provided that the mining claim embracing the land applied for was not located at a time when the land included therein was withdrawn or otherwise not subject to location.

(f) The Act provides that any conveyance of less than a fee made under the Act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

§ 2215.0–5 Definitions.

As used in the Act and the regulations of this part:

(a) The term "qualified applicant" means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the

heirs or devisees of such a residential occupant-owner.

(b) The term "occupant-owner" refers to persons who, on October 23, 1962, claimed title to valuable improvements which they or their predecessors in interest have constructed on an unpatented mining claim even though title to the improvements might ultimately be found to be in the Government.

(c) The term "interest" includes any estate in lands, including, but not limited to, fee simple, life estate, estate for a term of years, lease, or permit.

(d) The term "a principal place of residence" means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

(e) The term "qualified officer of the United States" means the Secretary of the Interior or his designate within the Department of the Interior or, with respect to lands within the administrative jurisdiction of any other department or agency, the designate of the head of that department or agency under authority delegated to him by the Secretary of the Interior.

(f) The word "equities" is intended to include for consideration such things as the pecuniary situation of the applicant, his abilty to pay, whether he previously paid market value for the property, the date when the mining claim was first staked, whether there are substantial reasons to believe that a concerted effort was made to develop and extract the minerals sought as compared to a casual attempt, whether such minerals were actually extracted and the deposit depleted, and whether the applicant was relying on custom in his occupancy. The word "equities" does not include any payments of real property taxes, public benefit assessments, or any other public service charges.

§ 2215.1 Petitions.

Any person who holds a mining claim which has not been invalidated and who wishes to determine whether he should make application under the Act, may petition, in writing, any qualified officer of the United States to state whether or not he believes the claim to be invalid. The petition must be accompanied by a nonrefundable petition service fee of $5. Such a petition will not be considered an admission of the invalidity of a claim. The petition should include the name and post office address of the claimant, the name, location and legal description of the mining claim or references sufficient to identify the land on the ground, the date of the location, date and place of recordation and claim of title, a description, including dates, of improvements placed on the lands, and a request for a statement of belief as to the invalidity of the claim.

§ 2215.2 Applications.

(a) Applicants must file applications on or before October 23, 1967, in the proper land office in the State in which the lands are located, or if the lands are in a State in which there is no land office, with the Bureau of Land Management, Washington 25, D.C., except that applications for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; applications for lands in Nebraska must be filed in the land office at Cheyenne, Wyoming.

(b) A filing fee of $10 which is not returnable is required, and should accompany the application.

(c) No particular form of application is required but the application must be typewritten or in legible handwriting and should contain the following information:

(1) Name and post office address of the applicant.

(2) Location of the mining claim by legal or other description sufficient to permit ready, accurate identification of the lands on the ground.

(3) Date of location of mining claim, name of claim, date and place of recordation, and chain of title.

(4) A description of the improvements placed upon the lands involved, and a statement showing that a residence had been on the claim since prior to July 23, 1955.

(5) A statement as to ownership and possession of the improvements during the period beginning with July 23, 1955, through October 23, 1962, including the name or names of any predecessors in interest during said period.

(6) Reference to the Act of October 23, 1962 (76 Stat. 1127).

(7) The date the mining claim was determined to be invalid or the date the claim was relinquished to the United States.

(8) A statement of the interest in lands which the applicant desires, such as "fee title," "lease," or "life estate."

(9) A statement of any equities which the applicant feels should be considered in establishing the purchase price.

(10) A description of the lands, not to exceed 5 acres, claimed to be actually occupied.

§ 2215.3 Offers to convey an interest in the lands applied for.

Where the authorized officer determines that an interest in the lands applied for can be conveyed, he will submit to the applicant an offer to convey, specifying the term of the estate offered, the conditions precedent which must be met before conveyance may be made, the limitations and reservations to be contained in the conveyance, the price to be paid, the cost of survey, if any, the conditions subsequent to be performed by the applicant, and the time within which the offer must be accepted. (See § 2215.0–3.)

§ 2215.4 Offers of alternate tracts.

(a) Where the authorized officer determines that an interest in the lands sought cannot be conveyed, he will so notify the applicant, giving his reasons therefor.

(b) Where the authorized officer determines that the conveyance of an interest in lands is otherwise justified but that the interests cannot be conveyed because the consent mentioned in paragraph (b) of § 2215.0–3 is not given, and he determines further that it would be proper to grant the applicant the right to select an alternate tract under the Act, he will advise that if satisfactory arrangements are made for termination of the occupancy of the unpatented mining claims and for settlement of any liability for unauthorized use thereof which may have been incurred, he will grant the applicant the right to select and purchase within 5 years an alternate tract from lands available or to be made available under the Act. The first applicant to select an available tract will have a preference right to purchase it at the price and under the terms set by the authorized officer, including a limitation on the time within which the applicant may purchase the tract selected.

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Subpart 2221—Scrip

AUTHORITY: The provisions of this Subpart 2221 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2221.1 Recordation.

§ 2221.1–1 Statutory requirements.

(a) The act of August 5, 1955 (69 Stat. 534, 535), requires that any owner of, or any person claiming rights to, the scrip, lieu selection, and similar rights described in paragraph (b) of this section must present his holdings or claim for recordation by the Department of the Interior. The act further provides that claims or holdings not presented for recordation as required by the act will not thereafter be accepted by the Department of the Interior for recordation or as a basis for the acquisition of lands.

(b) The types of scrip, lieu selections and similar rights to which the act applies include the following, with the stated exception: Valentine scrip issued under the act of April 5, 1872 (17 Stat. 649); Sioux Half-Breed scrip issued under the act of July 17, 1854 (10 Stat. 304); Supreme Court scrip issued under the act of June 22, 1860 (12 Stat. 85), March 2, 1867 (14 Stat. 544) and June 10, 1872 (17 Stat. 378); Surveyor-General scrip issued under the act of June 2, 1858 (11 Stat. 294); soldiers' additional homestead right granted by sections 2306 and 2307 of the Revised Statutes; forest lieu selection right assertable under the act of March 3, 1905 (33 Stat. 1264); lieu selection right conferred by the act of July 1, 1898 (30 Stat. 597); bounty land warrant issued under the act of March 3, 1855 (10 Stat. 701); and any lieu selection or scrip right or bounty land warrant, or right in the nature of scrip issued under any act of Congress not enumerated above except indemnity selection rights of any State.

§ 2221.1–2 Time limit.

The act requires owners of, and persons claiming rights to, any scrip, lieu selection, or similar rights described in § 2221.1–1 to present their claims or holdings for recordation within two years from August 5, 1955, with the following exceptions:

(a) Persons who, by transfer (by assignment, inheritance, operation of law, or otherwise) become owners of, or claimants of rights to, any such rights which have been recorded under the act must present their claims or holdings for recordation within six months after such transfer.

(b) Persons who, by transfer within the said period of two years from August

5, 1955, become owners of, or claimants of rights to, any such rights which have not been recorded under this act, must present their claims or holdings for recordation during the remainder of the said period of two years from August 5, 1955, or within six months from the date of such transfer, whichever period is longer.

§ 2221.1–3 How to secure recordation.

Persons who desire to record their holdings or claims under the act must present the following to the Director, Bureau of Land Management, Washington 25, D.C., within the time periods prescribed in § 2221.1–2.

(a) A statement, in duplicate, captioned "Application for Recordation of Scrip, Lieu Selection, or Similar Rights under the act of August 5, 1955 (69 Stat. 534)," containing the (1) name and full post-office address of the applicant, (2) names and full post-office addresses of all the owners or claimants of the right presented for recordation, (3) the type of scrip or right presented (see § 2221.1–1), and (4) the acreage of such scrip or right.

(b) The scrip, warrant, or other document which evidences their right, providing their right is based on such a document.

(c) A statement, in duplicate, showing the basis of their right, providing the right is not based on scrip, warrant, or other document.

§ 2221.1–4 Recordation and return of documents; significance of recordation.

Upon receipt of an application for recordation, the Director, Bureau of Land Management, will make a record of the holding or claim in the name of the owners or claimants cited in the application; will note the documentary evidence of right submitted (or one copy of the statement showing the basis of the right, if there be no documentary evidence) with the date and place of recording; and will return the evidence to the applicant. Such notation will constitute evidence merely that the holding or claim was recorded under the act and will otherwise have no bearing, one way or another, on the validity of the claim.

§ 2221.2 Procedures to locate scrip.

§ 2221.2–1 Application; fees.

(a) Applications to locate scrip, warrants, certificates, soldiers' additional rights or to make lieu selections of public lands outside of Alaska must be made on a form approved by the Director, properly executed, and must be accompanied by a petition for classification on a form approved by the Director. However, if the lands described in the application have been already classified and opened for acquisition with scrip, no petition is required. Applications to locate soldiers' additional homestead rights in Alaska must be made on a form approved by the Director, properly executed.

(b) All applications to locate scrip, warrants, certificates, or to make lieu selections must be accompanied by an application service fee of $10 which will not be returnable.

§ 2221.2–2 Notice.

(a) *When publication must begin.* Where classification of the land is required under section 7 of the act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f), publication of notice of location or selection should not be started until authorization is received from the authorized officer. Where classification is not required, the authorized officer will require the locator or selector, within 20 days from the filing of his location or selection, to begin publication of notice thereof, at his own expense, in a newspaper to be designated. Such publication must be made once a week for five consecutive weeks, in accordance with § 1824.4 of this chapter during which time a similar notice of the location or selection must be posted in the land office and upon the lands included in the location or selection, and upon each and every noncontiguous tract thereof.

(b) *Form.* The notice for publication must describe the land located or selected, give the date of location or selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file objection to such location or selection with the manager for the land office in which the land is situated, and to establish their interest therein, or the mineral character thereof.

(c) *Proof of publication and posting.* Proof of publication must consist of a statement of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the publication notice attached. Proof that the notice remained posted upon the land during the entire period of publication, must be made by the locator or selector or some credible person having personal knowledge of the fact. The manager will certify to the posting in his office. The first and last days of such publication and posting must in all cases be given.

(R.S. 2478, 43 U.S.C. 1201)

CROSS REFERENCE: For regulations relative to proofs, see Subpart 1824 of this chapter.

§ 2221.3 Soldiers' additional homestead rights.

§ 2221.3–1 Persons entitled to soldiers' additional homestead rights.

Any officer, soldier, seaman or marine who served for not less than 90 days in the Army or Navy of the United States during the Civil War, receiving an honorable discharge therefrom, and who, prior to June 22, 1874, the date of the adoption of the Revised Statutes, made a homestead entry for less than 160 acres, may, under section 2306, Revised Statutes (43 U.S.C. 274), enter an additional quantity of land which added to the previous entry will not aggregate more than 160 acres. This right was extended by section 2307, Revised Statutes (43 U.S.C. 278), to the widow, if unmarried, otherwise to the minor orphan children.

§ 2221.3–2 Transfers and assignments.

(a) *Right is both inheritable and assignable.* By the Supreme Court decision of November 16, 1925, in the case of Anderson v. Clune (269 U.S. 140, 70 L. ed. 200), it was held that the grant vests a property right in the donee, to which must be accorded the quality of inheritability as well as assignability and that such right, if not exercised or transferred by the donee, passes to his estate as other property, subject only to the exercise of the rights given by section 2307, Revised Statutes (43 U.S.C. 278), to the widow and minor orphan children.

(b) *Recertified rights.* (1) The transfer and assignment of soldiers' additional rights recertified to owners and bona fide purchasers under the act of August 18, 1894 (28 Stat. 397; 43 U.S.C. 276), may be written or printed upon a separate sheet or sheets of paper to be securely attached to the certificate.

(2) The assignments may be made in accordance with the forms printed in 30 L.D. 604, 605, or their substantial equivalents.

(3) Each assignment of a recertified right must be attested by two witnesses and duly acknowledged before some officer authorized to take acknowledgments of deeds in the county or district wherein the assignment is made, who shall certify that the assignor is well known to such officer, that he is the identical person to whom the soldier's additional right was recertified, and who executes the assignments thereof.

(c) *Assignment of undivided interests.* (1) If one claiming a portion of a soldier's additional right as the heir of a soldier furnishes convincing proof of his heirship, the names of the other heirs, and that there are no debts due by the estate of the soldier, his application to locate his portion of the rights, or an assignment thereof, will be recognized.

(2) A soldier's additional right not exercised (or assigned) by the soldier, nor by his widow during widowhood, in the absence of minor children, descends to those who are his heirs under the laws of the State of his domicile at the time of his death, and, in making proof of the undivided interest to be located or assigned, the applicant will be required to furnish evidence showing the succession in the same manner as in the case of estates generally.

§ 2221.3–3 Use of rights.

(a) *How right may be used.* The soldier's additional right may be used (1) by the soldier in his lifetime either directly by entering the land or indirectly, in his lifetime, by conveying his right to entry to an assignee; or (2) similarly, by the widow, while her status as widow of the soldier continues; or (3) similarly, by the minor orphan children, during their minority, acting through their lawful guardian. In case a soldier entitled to the right dies without exercising it, leaving no widow or minor orphan children, the right to entry vests in his personal representative as personal property. If the right passes to the soldier's widow and she remarry or die without exercising it, and there be no minor children of the soldier then surviving, the

right vests in the soldier's estate; but if the right passes to the minor children, it becomes absolute in them, in no way conditioned upon an appropriation by the guardian during their minority.

(b) *Residence and cultivation not required of entryman.* Residence and cultivation are not required in the location of soldiers' additional rights, either by the original beneficiary or by his assignee, no matter whether the original entry was perfected or abandoned.

(c) *Selection of land and application.* The owner of a soldier's additional right who desires to personally exercise the same must first select a tract of land and then file formal application therefor in the land office for the district in which the land desired is situated, accompanying the same with the evidence as to existence and ownership of the right as indicated in § 2221.3–4 if the land desired be located in Kansas, Michigan, Mississippi, or Wisconsin, or other public-land State in which there is no land office, the application and accompanying evidence must be filed in the Bureau of Land Management, Washington 25, D.C.

(d) *Forms prescribed for applications.* Separate forms approved by the Director must be used for public lands in Alaska and other public lands.

§ 2221.3–4 Determination of validity of right.

The Bureau of Land Management does not pass upon the question of whether or not an additional right exists in the absence of an application to locate the alleged right upon a specific tract of land which must be accompanied with a record of the military service, description of the entry made prior to June 22, 1874, competent evidence showing identity of the soldier with the entryman, that no subsequent entry has been made, and that the right has not been previously assigned. If the right is sought to be located by the assignee, appropriate evidence must be submitted showing that he is entitled thereto by assignment.

§ 2221.3–5 Action on applications.

(a) Where an application to locate soldiers' additional rights under sections 2306 and 2307, Revised Statutes (43 U.S.C. 274, 278), is held for rejection, and the applicant accepts the holding and files a substitute soldiers' additional right, such substitute right should be accompanied by the proper formal application duly executed. The substitution amounts to a waiver of all rights under the rejected application. Publication and posting must be made as required by § 2221.2–2, except in Alaska, where publication and posting must be made in accordance with section 10, Act of May 14, 1893 (30 Stat. 413; 48 U.S.C. 359), and § 2221.9–4(e). The above covers cases in which the entire right has been held to be invalid, and has no bearing whatever on the so-called "combination" cases. Where a part of a combination of rights is held to be invalid and new rights substituted therefor, a new application should not be filed.

(b) No such application should be received by the manager unless accompanied by evidence of the right, or by a reference to the case, by land office, serial number and description of the land, containing such evidence.

§ 2221.3–6 Certificates issued prior to August 18, 1894.

All certificates of right regularly issued by the General Land Office prior to August 18, 1894, showing that the parties named therein are entitled to make soldiers' additional homestead entries, are declared to be valid by the act of said date (28 Stat. 397; 43 U.S.C. 276), notwithstanding any attempted sale or transfer. The said act provides that, where such certificates had been or might thereafter be sold or transferred, the sale or transfer thereof shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value, and that all entries made by such purchasers therewith shall be approved and patent shall issue in the name of the assignees. Before the approval of such entries for patent the transferee must file satisfactory proof of ownership and of bona fide purchase for value.

§ 2221.3–7 Allowance of application and issuance of final certificate.

A soldier's additional application does not segregate the land nor prohibit the filing of other applications for such land until after its allowance. The entry and final certificate should bear the same date. The manager, after collecting a service charge of $25, will issue final certificate.

§ 2221.3–8 Rule of approximation not permitted.

The rule of approximation will not be permitted in the location of soldiers' additional homestead rights whether in their entirety, partly, or in combination with other rights or parts thereof.

§ 2221.4 Valentine scrip.

(a) In receiving applications to file, or locate, scrip issued by the General Land Office (now the Bureau of Land Management) to Thomas B. Valentine, under the act of April 5, 1872 (17 Stat. 649), the manager will be governed by the following instructions:

(b) By the terms of the act, and by the face of the scrip itself, such scrip is applicable to any "unoccupied and unappropriated public lands of the United States not mineral."

(c) The scrip may be located by the said Thomas B. Valentine or his legal assignees.

(d) By the location of Valentine scrip upon a legal subdivision of the public land of less area than that called for by the scrip, the locator does not waive or surrender his right to the excess or unused portion thereof (31 L.D. 249).

(e) When application is made to file the said scrip upon unsurveyed land, a description by metes and bounds, together with a map or diagram of the tract applied for must be filed with the application. In such cases, the scrip, with the accompanying papers as aforesaid will be forwarded to the Bureau of Land Management. Within 3 months from the date of the receipt by the manager of the official plat of survey of the said township, the party who may have filed the said scrip will be required to designate upon the official plat the specific subdivision embraced in the said filing, whereupon the location thereof will be consummated. Should the applicant fail to so adjust within the specified 3 months, the manager will immediately thereafter proceed to adjust the filing.

§ 2221.8 Forest lieu selection rights.

(a) There are outstanding, certain rights known as "forest lieu selection rights," or scrip.

(b) Forest lieu selections were authorized by the act of June 4, 1897 (30 Stat. 36), which was amended by the act of June 6, 1900 (31 Stat. 614).

(c) The act of March 3, 1905 (33 Stat. 1264), repealed the acts mentioned but confirmed contracts which theretofore had been entered into by the Secretary of the Interior. The repealing act excepted from its operation valid selections then pending and provided that if any such selection should fail through no fault of the selector, a new selection might be made in lieu thereof.

(d) Regulations under the acts of June 4, 1897, and June 6, 1900, were approved July 7, 1902 (31 L.D. 372), and regulations under the act of March 3, 1905, were approved May 16, 1905 (33 L.D. 558). These regulations were not codified, in view of their limited application on June 1, 1938.

§ 2221.9 Alaska.

§ 2221.9–1 Soldiers' additional homestead entries.

(a) *Authority.* The laws authorizing entries in Alaska under sections 2306 and 2307, Revised Statutes (43 U.S.C. 274, 278), known as soldiers' additional homestead entries, are incorporated as a part of the general homestead laws which are applicable in the State.

(b) *Scrip which may and may not be located in Alaska.* No scrip or lieu rights can be located in Alaska except soldiers' additional homestead rights.

§ 2221.9–2 General information.

General information relative to soldiers' additional homestead rights is contained in this Subpart 2221 which contains information as to the inheritability and assignability of the rights.

§ 2221.9–3 Coal, oil, or gas lands.

Lands in soldiers' additional rights applications that may be valuable for coal, oil or gas deposits are subject to the regulations of § 2023.5.

CROSS REFERENCE: For homesteads on coal, oil and gas lands, see § 2023.5.

§ 2221.9–4 Procedures.

(a) *Application*—(1) *Form of application.* Application to locate soldiers' additional rights in Alaska must be presented on a form approved by the Director. If presented by other than an assignee, the form may be appropriately modified.

(2) *Application by association or corporation.* An application by an association must show the qualifications of each member thereof, and an application by a corporation must be accompanied by proof of incorporation, established by the certificate of the officer having custody

of the records of incorporation at the place of its formation, and it must be shown that the corporation is authorized to hold land in Alaska.

(3) *Description of land in application.* If the land be surveyed, it must be described in the application according to the legal subdivisions of the public land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey.

(4) *Statement to accompany application.* An application on the prescribed form must be accompanied by a duly corroborated statement showing:

(i) That no portion of the lands occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(ii) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (§ 2024.2.) (Interprets or applies secs. 4, 5, 69 Stat. 444; 48 U.S.C. 462 note.)

(iii) That the land does not adjoin any inland or water-front location made with soldier's additional rights which, together with the land applied for, would constitute a single body of land exceeding 160 acres.

(iv) That the land is not included within an area which is reserved, because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 2321.1–2(c).

(v) The facts as to all waters upon the land other than springs, whether creek, pond, lagoon, or lake, their source, depth, width, outlet and current (whether swift or sluggish) whether or not the same or any of them are navigable for skiffs, canoes, motor boats, launches, or other small water craft, and whether or not the same or any of them constitute a passageway for salmon or other merchantable seagoing fish to spawning grounds.

(vi) That no part of the land is valuable for coal, oil, gas or other valuable mineral deposits and that at the date of the application no part of the land was claimed under the mining law.

CROSS REFERENCES: See the following parts in this chapter. For homesteads § 2211.9 for Indian and Eskimo allotments § 2212.9 for mining claims, Subpart 3636 of this chapter for school indemnity selections, § 222.9 for shore space, Supart 2024 for trade and manufacuring sites, Subpare 2213.

(5) *Execution and filing of application.* The application must be executed in duplicate and it must be filed in the proper land office. It must be signed by the applicant, but need not be sworn to.

(b) *Evidence required*—(1) *Validity and ownership of right.* The applicant must furnish evidence of the prima facie validity of the additional right and of his ownership thereof.

(2) *Unused portion of certificate or recertified certificate.* If the right used is a certificate or recertified certificate which exceeds the area of the land entered, evidence of the unused portion may be obtained by procuring a certified copy or photostat copy of the certificate bearing proper notation as to the amount used.

(c) *Area selected.* An applicant will not be permitted to select an area which is greater than the area of the additional right or rights tendered.

(d) *Survey.* (1) Upon receipt of an application under the provisions of section 2 of the act of April 13, 1926 (44 Stat. 244; 48 U.S.C. 336), the State Director will, if conditions make such procedure practicable and no objection is shown by his records, furnish the applicant with an estimate of the cost of field and office work, and upon receipt of the deposit required will issue appropriate instructions for the survey of the claim, such survey to be made not later than the next surveying season. The sum so deposited by the applicant for survey will be deemed an appropriation thereof and will be held to be expended in the payment of the cost of the survey, including field and office work, and upon the acceptance of the survey any excess over the cost shall be repaid to the depositor or his legal representative.

(2) In case it is decided that by reason of the inaccessibility of the locality embraced in an application for the survey, or by reason of other conditions, it will result to the advantage of the Government or claimant to have the survey executed by a deputy surveyor, the State Director will deliver an order to the applicant for such survey, which will be sufficient authority for any deputy surveyor to make a survey of the claim.

(3) In the latter contingency the survey must be made at the expense of the applicant, and no right will be recognized as initiated by such application unless actual work on the survey is begun and carried to completion without unnecessary delay.

(e) *Publication and posting.* After a special survey of the land has been made, and upon receipt of the plat and field notes thereof, the manager will notify the applicant that within 60 days the applicant must furnish evidence of publication and posting, and that if he fails to do so the application will be rejected and the survey canceled. The publication and posting will be required as follows:

(1) The notice will be prepared by the manager, containing the information required under § 1824.9–1 of this chapter and it must be published once a week for a period of nine consecutive weeks, in accordance with § 1824.4 of this chapter, at the expense of the applicant in a newspaper of established character and general circulation designated by the manager as being published nearest the land.

(2) The applicant must cause a copy of the plat showing the survey, together with a copy of the application, to be posted in a conspicuous place on the claim for 60 consecutive days during the period of publication.

(3) Where the land is located according to the public surveys, publication and posting will be required in accordance with §§ 2221.2–1 to 2221.2–2(c).

(f) *Adverse claim.* (1) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 43 U.S.C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association having or asserting any adverse interest in or claim to the tract of land or any part thereof sought to be purchased may file in the land office where the application is pending, under oath, an adverse claim setting forth the nature and extent thereof; and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(2) Where such adverse claim is filed, action on the application will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(3) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title as stated and any contest which may be filed will be disposed of in accordance with Parts 1840 and 1850 of this chapter.

(g) *Proof of publication and posting.* The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper, and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and application were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

(h) *Entry and final certificate.* The application and proof filed therewith will be carefully examined and, if all be found regular, the application will be allowed and final certificate issued upon the payment of a service charge of $25 and in the absence of objections shown by the records.

Subpart 2222—State Grants

AUTHORITY: The provisions of this Subpart 2222 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2222.1 Indemnity selections.

§ 2222.1–1 Authority.

(a) Sections 2275 and 2276 of the Revised Statutes, as amended August 27, 1958, and September 14, 1960 (43 U.S.C. 851, 852), referred to in §§ 2222.1–1 to 2222.1–5 as "the law" authorize the public

land States except Alaska to select lands (or the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals, or any specified mineral or minerals, which interest is referred to in §§ 2222.1–1 to 2222.1–5 as the "mineral estate") of equal acreage within the boundaries as indemnity for grant lands in place lost to the States because of appropriation prior to survey or because of natural deficiencies resulting from such causes as fractional sections and fractional townships.

(b) The law provides that indemnity for lands lost because of natural deficiencies will be selected from the unappropriated, nonmineral, surveyed public lands, and that indemnity for lands lost because of appropriation prior to survey will be selected from the unappropriated, surveyed public lands subject to the following restrictions:

(1) No lands mineral in character may be selected except to the extent that the selection is made as indemnity for mineral lands.

(2) No lands on a known geologic structure of a producing oil or gas field may be selected except to the extent that the selection is made as indemnity for lands on such a structure.

(c) The law also provides that lands subject to a mineral lease or permit may be selected, but only if the lands are otherwise available for selection, and if none of the lands subject to that lease or permit are in producing or producible status. It permits the selection of lands withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulphur and lands withdrawn by Executive Order No. 5327 of April 15, 1930, if such lands are otherwise available for, and subject to, selection: *Provided,* That except where the base lands are mineral in character, such minerals are reserved to the United States in accordance with and subject to the regulations in Subpart 2023. Except for the withdrawals mentioned in this paragraph and for lands subject to classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315f), as amended, the law does not permit the selection of withdrawn or reserved lands.

(d) The law further provides that upon the revocation not later than 10 years after August 27, 1958, of any order of withdrawal, in whole or in part, the order or notice taking such action shall provide for a period of not less than six months before the date on which it otherwise becomes effective in which the State in which the lands are situated shall have a preferred right of application for selection under the law, except as against prior existing valid settlement and preference rights conferred by existing law or as against equitable claims subject to allowance and confirmation, and except where a revocation of an order of withdrawal is made in order to assist in a Federal land program.

(e) Subsection (b) of the section 2276 of the Revised Statutes, as amended, sets forth the principles of adjustment where selections are made to compensate for deficiencies of school lands in fractional townships.

§ 2222.1–2 Waiver of State preference right of application.

Where the proper selecting agent of the State files in writing in the appropriate land office a waiver of the preference provisions of paragraph (d) of § 2222.1–1 in connection with the proposed revocation of an order of withdrawal, the order or notice effecting such revocation will not provide for such preference.

§ 2222.1–3 Applications for selection.

(a) Applications for selection must be made on a form approved by the Director, and must be accompanied by a petition on a form approved by the Director properly executed. However, if the lands described in application have been already classified and opened for selection pursuant to the regulations of this part, no petition is required.

(b) Applications for selection under the law will be made by the proper selecting agent of the State and will be filed, in duplicate, in the proper land office in the State or for lands or mineral estate in a State in which there is no land office, will be filed in accordance with the provisions of § 1821.2 of this chapter.

(c) Applications must be accompanied by the following information:

(1) A reference to the act of August 27, 1958 (72 Stat. 928), as amended.

(2) A certificate by the selecting agent showing:

(i) All facts relative to medicinal or hot springs or other waters upon the selected lands.

(This provision does not apply insofar as the application involves the selection of the mineral estate.)

(ii) That indemnity has not been previously granted for the assigned base lands and that no other selection is pending for such assigned base.

(3) A statement describing the mineral or nonmineral character of each smallest legal subdivision of the base and selected lands or mineral estate.

(4) A certificate by the officer or officers charged with the care and disposal of school lands that no instrument purporting to convey, or in any way incumber, the title to any of the land used as base or bases, has been issued by the State or its agents.

(d) In addition to the requirements of paragraph (c) of this section, applications for selection must conform with the following rules:

(1) The selected and base lands must be described in accordance with the official plats of survey except that unsurveyed base lands will be described in terms of their probable legal description, if and when surveyed in accordance with the rectangular system of surveys.

(2) The selection in any one application must not exceed 640 acres.

(3) Separate base or bases must be assigned to each smallest legal subdivision of selected land or mineral estate and such base or bases must correspond in area with each subdivision. A portion of a smallest actual or probable legal subdivision may be assigned as base but such assignment is an election to take indemnity for the entire subdivision and is a waiver of the State's rights to such subdivision, except that any remaining balance may be used as base for future selections.

(4) The cause of loss of the base lands to the State must be specifically stated for each separate base.

(e) Applications for selection must be accompanied by a nonrefundable application service charge of $5.

§ 2222.1–4 Publication and protests.

(a) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at its own expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of a certification to the State for lands selected under the law. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(b) The State must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2222.1–5 Certifications; mineral leases and permits.

(a) Certifications will be issued for all selections approved under the law by the authorized officer of the Bureau of Land Management.

(b) Where all the lands subject to a mineral lease or permit are certified to a State, or if, where the State has previously acquired title to a portion of the lands subject to a mineral lease or permit, the remaining lands in the lease or permit are certified to the State, the State shall succeed to the position of the United States thereunder. Where a portion of the lands subject to any mineral lease or permit are certified to a State, the United States shall retain for the duration of the lease or permit the mineral or minerals for which the lease or permit was issued.

§ 2222.2 Quantity and special grant selections.

§ 2222.2–1 Scope of regulations.

Sections 2222.2–1 to 2222.2–3 apply generally to quantity and special grants made to States other than Alaska.

§ 2222.2–2 Lands subject to selection.

Selections made in satisfaction of quantity and special grants can generally be made only from the vacant, unappropriated, nonmineral, surveyed public lands within the State to which the grant was made. If the lands are otherwise available for selection, the States may select lands which are withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, sodium, or sulphur, provided that the appropriate minerals are reserved to the United States in accordance with and subject to the regulations of Subpart 2023.

§ 2222.2–3 Applicable regulations.

The regulations in §§ 2222.1–3 to 2222.1–5 apply to quantity and special grants with the following exceptions and modifications:

(a) Sections 2222.1–5(b) and 2222.1–3(c)(4); and §§ 2222.1–3(d)(3) and (4), and all references to base lands and to mineral estate do not apply.

(b) Section 2222.1–3(c)(1) is modified to require reference to the appropriate granting act; § 2222.1–3(c)(3) is modified to require a statement testifying to the nonmineral character of each smallest legal subdivision of the selected land; § 2222.1–3(d)(2) is modified to permit as much as 6,400 acres in a single selection; and § 2222.1–3(c)(2)(iii) is modified to require a certificate that the selection and those pending, together with those approved, do not exceed the total amount granted for the stated purpose of the grant.

§ 2222.3 School land grants to certain States extended to include mineral sections.

§ 2222.3–1 Beneficiary States; conditions under which grant becomes effective.

(a) The first paragraph of section 1 of the act approved January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870), reads as follows:

That, subject to the provisions of subsections (a), (b), and (c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(b) The beneficiaries of this grant are the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The grant also extends to the unsurveyed school sections reserved, granted, and confirmed to the State of Florida by the act of Congress approved September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483, 484).

(c) The additional grant thus made, subject to all the conditions in the statute making same, applies to school-section lands known to be of mineral character at the effective date thereof as hereinafter defined. It does not include school-section lands nonmineral in character, those not known to be mineral in character at time of grant, but afterwards found to contain mineral deposits, such lands not being excepted from the grants theretofore made (Wyoming et al. v. United States, 255 U.S. 489–500, 501, 65 L. ed. 742–748), nor does it include lands in numbered school sections in lieu of or as indemnity for which lands were conveyed to the States first above named, or to the State of Florida with respect to school-section lands coming within the purview of the act of September 22, 1922, prior to January 25, 1927.

(d) Determinations made prior to January 25, 1927, by the Secretary of the Interior or the Commissioner of the General Land Office to the effect that lands in school sections were excepted from school-land grants because of their known mineral character do not, of themselves, prevent or affect in any way the vesting of title in the States pursuant to the provisions of the statute making the additional grant.

(e) Subsection (a) of section 1 of the act provides:

That the grant of numbered mineral sections under this Act shall be of the same effect as prior grants for the numbered nonmineral sections, and title to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

§ 2222.3–2 Effective date of grant.

Grants to the States of school lands in place (the numbered sections), of the character and status subject thereto, as a rule, are effective and operate to vest title upon the date of the approval of the statute making the grant or the date of the admission of the State into the Union, as to lands then surveyed, and as to the lands thereafter surveyed upon the date of the acceptance of the survey thereof by the Director of the Bureau of Land Management. (United States v. Morrison, 240 U.S. 192, 60 L. ed. 599; United States v. Sweet, 245 U.S. 563, 62 L. ed. 473; Wyoming et al. v. United States, supra.) It is held, therefore, that the grant made by the first paragraph of section 1 of the act of January 25, 1927, subject to the provision therein with respect to indemnity or lieu lands, to the provisions of subsections (b) and (c) of said section 1 and following the plain provisions of subsection (a) thereof is effective upon the date of the approval of the act (January 25, 1927) as to lands then surveyed and the survey thereof accepted by the Director of the Bureau of Land Management and as to the unsurveyed school sections in the State of Florida granted to that State by the act of September 22, 1922. The grant, as to other lands thereafter surveyed, subject to the same provisions is effective upon the acceptance of the survey thereof as above indicated.

§ 2222.3–3 States not permitted to dispose of lands except with reservation of minerals.

(a) Subsection (b) of section 1 of the act of January 25, 1927, provides:

That the additional grant made by this Act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals disposed of contrary to the provisions of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(b) The lands granted to the States by the act of January 25, 1927, and the mineral deposits therein are to be disposed of by the States in the manner prescribed in subsection (b) thereof, provision being made for judicial forfeiture in case of disposal of any of the lands or minerals contrary to the provisions of the act.

§ 2222.3–4 Lands included in grant.

(a) Section 2 of the act of January 25, 1927 (44 Stat. 1027; 43 U.S.C. 871) reads as follows:

SEC. 2. That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of States under grants other than for the support of common or public schools by numbered school sections in place, and this Act shall not apply to indemnity or lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the State under the provisions of this or other Acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

(b) The only grants affected in any way by the provisions of the act of January 25, 1927, are those of numbered sections of land in place made to the States for the support of common or public schools. The adjudication of claims to land asserted under other grants, for indemnity or lieu lands and exchanges of lands, will proceed as theretofore, being governed by the provisions of existing laws applicable thereto. The States will be afforded full opportunity, however, if the facts and conditions are such as to authorize such action, either to assign new base in support of or to withdraw pending unapproved indemnity school land selections in support of which mineral school-section lands have been tendered as base.

§ 2222.3–5 Lands excluded from grant.

(a) Subsection (c) of section 1 of the act of January 25, 1927, provides:

That any lands included within the limits of existing reservations of or by the United States, or specifically reserved for waterpower purposes, or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska are excluded from the provisions of this act.

(b) School-section lands included within the limits of existing reservations of or by the United States, specifically reserved for waterpower purposes, or included in any suit or proceedings in the courts of the United States, prior to January 25, 1927, and all lands in Alaska are excluded from the provisions of the act. (§ 2222.3–7.)

(c) The words "existing reservation" as used in subsection (c) are construed generally and subject to specific determination in particular cases if the need therefor shall arise, as including Indian and military reservations, naval and petroleum reserves, national parks, national forests, stock driveways, reservations established under the act of June

25, 1910 (36 Stat. 847; 43 U.S.C. 141–143), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 142), and all forms of Executive withdrawal recognized and construed by the Department of the Interior as reservations, existent prior to January 25, 1927.

CROSS REFERENCE: For national forests and national parks, see §1821.7–2 of this chapter. For naval petroleum reserves, see § 3120.4 of this chapter.

§ 2222.3–6 Claims protected.

(a) Valid applications, claims, or rights protected by the provisions of subsection (c) of section 1 of the act of January 25, 1927, include applications, entries, selections, locations, permits, leases, and other forms of filing, initiated or held pursuant to existing laws of the United States prior to January 25, 1927, embracing known mineral school-section lands then surveyed and otherwise within the terms of the additional grant, and as to lands thereafter surveyed, valid applications, claims, or rights so initiated or held prior to the date of the acceptance of the survey. The additional grant to the State will attach upon the effective date of the relinquishment or cancellation of any claim, so asserted, in the absence of any other valid existing claim for the land and if same be then surveyed. Should the validity of any such claim be questioned by the State, proceedings with respect thereto by protest, contest, hearing, etc., will be had in the form and manner prescribed by existing rules governing such cases. This procedure will be followed in the matter of all protests, contests, or claims filed by individuals, associations, or corporations against the States affecting school-section lands.

(b) The present grant, like other grants in aid of public or common schools, is subject to the rights and claims of those who settle upon, with a view to homestead entry, or occupy, with a view to desert-land entry, prior to survey in the field, lands which on survey are found to be in numbered school sections.

§ 2222.3–7 Grant of mineral school sections effective upon restoration of land from reservation.

(a) By the act of January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870, 871), which grants to the States certain school-section lands that are mineral in character, it is provided by subsection (c) of section 1 that where such lands are embraced within an existing reservation at the date of said act of 1927, they are thereby excluded from the grant made by said act.

(b) Under the amendatory act of May 2, 1932 (47 Stat. 140; 43 U.S.C. 870), it is provided that in the event of the restoration of the lands from such reservation, the grant to the State of such mineral school-section lands will thereupon become effective.

(c) Adjudications in connection with the State's title to school sections will be governed by the provisions of this amendatory act of May 2, 1932.

§ 2222.4 Patents for granted school sections.

§ 2222.4–1 Authority.

The act approved June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a) provides for the issuance of patent, upon application by a State for the numbered school sections in place granted for the support of common schools.

§ 2222.4–2 Purpose of law.

(a) The purpose of the act of June 21, 1934, is to provide the States, upon application, with evidence of title to the designated school-section lands granted by the Enabling Acts, by the act of January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870, 871), and by any other act of Congress. The words "and by any other act of Congress" are construed to embrace any grant or grants of numbered school sections in place made to any of the public-land States.

§ 2222.4–3 Application for patent.

(a) *Filing and fees.* (1) There will be no filing or conveyance fees required on the part of the States in connection with the patenting of school sections in place under this act.

(2) The act places no limitation upon the areas which may be applied for under one application. No fixed rule is necessary in regard to the area which may be included in any one patent. This matter will be handled in such manner as will permit the best results from an administrative standpoint.

(3) Application shall be filed in the proper land office in accordance with the provisions of § 1821.2 of this chapter.

(b) *Publication of notice; protests.* An applicant for patent under the act of June 21, 1934, will be required to publish notice of its application, at its own expense, in a daily, weekly, or semiweekly paper, published in the vicinity of the land, once each week for five consecutive weeks, and to furnish proof thereof by a statement of the publisher or foreman of the newspaper employed. Notices for publication will be prepared by the manager and will be transmitted to the proper State official for publication in the paper designated. Where publication is made in a daily paper, the notice should appear in the Wednesday issue for five consecutive weeks; if in a semiweekly paper, in either issue for five consecutive weeks. The notice should require persons asserting claims to any of the lands advertised to file protest or notice of their claims in the land office within 30 days from the date of last publication, in order to receive proper consideration before the issuance of a patent.

§ 2222.4–4 Date title vested in the State; conditions or limitations to be made in patent; hearings.

(a) Determination of the date when title vested in the State and of "prior conditions, limitations, easements, or rights, if any," to which the land is subject, will be ascertained from the records in the Bureau of Land Management and in the Geological Survey, and appropriate mention of such facts made in the patent.

(b) Should hearings be ordered the costs will be assessed between the parties thereto in the manner provided by Part 1850 of this chapter. Orders authorizing the issuance of patents for school sections under the act of June 21, 1934, will be signed by the Director of the Bureau of Land Management.

§ 2222.5 Swamp-land grants.

§ 2222.5–1 Authority.

(a) Circular dated Mar. 17, 1896, containing the swamp-land laws and regulations, states:

As soon as practicable after the passage of the swamp-land grant of September 28, 1850, viz, on the 21st of November 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said Act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:

1. The field notes of Government survey could be taken as the basis for selections, and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.

2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.

The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.

The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Mississippi, Missouri, and Ohio. Later Oregon adopted this method.

The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i.e., to the field notes of survey, as a basis of settlement, in recent years.

The authorities of California did not adopt either method, and the passage of the Act of July 23, 1866, rendered such action on their part unnecessary.

In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in accordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State.

The grant of swamp lands, under acts of March 2, 1849, and September 28, 1850, is a grant in praesenti. See United States Supreme Court decisions Railroad Co. v. Fremont County (9 Wall, 89, 19 L. ed. 563); Railroad Co. v. Smith (id. 95, 19 L. ed. 595); Martin v. Marks (7 Otto 345, 24 L. ed. 940); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L.L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L.L. 564).

(c) The act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary of the Interior, August 17, 1858; Commissioner, General Land Office, May 2, 1871 (Copp's L.L. 474), affirmed by Secretary June 1, 1871, and Commissioner, General Land Office, January 19, 1874 (Copp's L.L. 473), affirmed by Secretary July 9, 1875.

(d) A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. (See Secretary's decisions, October 4, 1855 (1 Lester's L.L. 553), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L.L. 149), and September 19, 1879.

(e) The Swamp-Land Acts do not contain any exception or reservation of mineral lands and none is to be implied, since at the time of their enactment the public policy of withholding mineral lands for disposition only under laws including them, was not established. Work, Secretary of the Interior v. Louisiana (269 U.S. 250, 70 L. ed. 259).

§ 2222.5–2 Selection and patenting of swamp lands.

(a) All lands properly selected and reported to the Bureau of Land Management as swamp will be compared with the records of the said office, and lists of such lands as are shown to be swamp or overflowed, within the meaning of the acts of March 2, 1849, and September 28, 1850 (9 Stat. 352, 519), and that are otherwise free from conflict will be made out by such office and approved.

(b) When the lists have been approved a copy of each list will be transmitted to the governor of the State, with the statement that on receipt of his request patent will issue to the State for the lands. A copy of each list also will be transmitted to the manager of the land office for the district in which the lands are situated, and he will be requested to examine the same with the records of his office and report any conflicts found.

(c) Upon receipt of a request from the governor for patent, and a report from the manager as to status, patents will issue to the State for all the lands embraced in said lists so far as they are free from conflict.

(d) Under the provisions of the act of March 2, 1849, granting swamp lands to the State of Louisiana, a certified copy of the list approved by the Director, transmitted to the Governor, has the force and effect of a patent.

§ 2222.5–3 Applications in conflict with swamp-land claims.

Applications adverse to the State, in conflict with swamp-land claims, will be governed by the following rules:

(a) In those States where the adjudication of swamp-land claims is based on the evidence contained in the survey returns, applications adverse to the State for lands returned as swamp will be rejected unless accompanied by a showing that the land is non-swamp in character.

(b) In such case, the claim adverse to the State must be supported by a statement of the applicant under oath, corroborated by two witnesses, setting forth the basis of the claim and that at the date of the swamp-land grant the land was not swamp and overflowed and not rendered thereby unfit for cultivation. In the absence of such affidavit the application will be rejected. If properly supported, the application will be received and suspended subject to a hearing to determine the swamp or non-swamp character of the land, the burden of proof being upon the non-swamp claimant.

(c) In those States where the survey returns are not made the basis for adjudication of the swamp-land selections, junior applications for lands covered by swamp-land selections may be received and suspended, if supported by non-swamp affidavits corroborated by two witnesses, subject to hearing to determine the character of the land, whether swamp or non-swamp, and the burden of proof will be upon the junior applicant. Likewise, the State, if a junior applicant, may be heard upon furnishing an affidavit corroborated by two witnesses alleging that the land is swamp in character within the meaning of the swamp-land grant, in which case the burden of proof at the hearing will be upon the State.

(d) Where hearings are ordered in any such cases, the Rules of Practice governing contests will be applied, except as herein otherwise provided.

CROSS REFERENCE: See Parts 1840 and 1850 of this chapter.

§ 2222.6 Carey Act grants.

§ 2222.6–1 Grants to States for irrigation under State supervision.

(a) *Authority.* (1) Under the provisions of section 4 of the act of August 18, 1894 (28 Stat. 422; 43 U.S.C. 641), known as the Carey Act, as amended and supplemented the States are allowed 10 years from the date of the approval by the Director of an application for segregation of the lands in which to irrigate and reclaim the lands. The Director may, however, in his discretion extend the time for a period of 5 years. The Director may, in his discretion, restore to the public domain any lands not irrigated and reclaimed at the end of the 10 year period or any extension thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the Director, the Director may, in his discretion restore the lands to the public domain.

(2) (i) Section 4 of the act of August 18, 1894 (28 Stat. 422; 43 U.S.C. 641), known as the Carey Act, authorizes the Secretary of the Interior with the approval of the President, to contract and agree to patent to States, in which there are desert lands, not to exceed 1,000,000 acres of such lands to each State, under the conditions specified in the act. The lands selected by the several States are segregated from the public domain for a period of 10 years, the States undertaking within that time to cause an adequate irrigation system to be constructed and a sufficient water supply to be made available in a substantial ditch for the reclamation of the lands by irrigation. The lands when patented are disposed of by the States to actual settlers.

(ii) The act of June 11, 1896 (29 Stat. 434; 43 U.S.C. 642), authorizes a lien on the land for the cost of construction of the irrigation works and permits the issuance of patent without actual cultivation of the land.

(iii) Section 3 of the act of March 3, 1901 (31 Stat. 1188; 43 U.S.C. 641), authorizes an extension of the period of segregation for not exceeding 5 years.

(iv) The act of March 1, 1907 (34 Stat. 1056), extends the provisions of the law to the former Southern Ute Indian Reservation in Colorado.

(v) The Joint Resolution approved May 25, 1908 (35 Stat. 577), grants to the State of Idaho an additional 1,000,000 acres.

(vi) The act of May 27, 1908 (35 Stat. 347; 43 U.S.C. 645), grants to the State of Idaho an additional 1,000,000 acres, and to the State of Wyoming an additional 1,000,000 acres.

(vii) The act of February 18, 1909 (35 Stat. 638; 43 U.S.C. 646), extends the provisions of the Carey Act to the States of Arizona and New Mexico.

(viii) The act of February 24, 1909 (35 Stat. 644; 43 U.S.C. 647), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

(ix) The act of March 15, 1910 (36 Stat. 237; 43 U.S.C. 643), authorizes a temporary withdrawal for one year of lands, which the State may propose to select with a view to enabling the State to examine the lands and plan the method of reclamation.

(x) The act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Ft. Bridger Military Reservation in Wyoming.

(xi) The act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523–525), permits the sale of surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

(xii) The act of March 4, 1911 (36 Stat. 1417; 43 U.S.C. 645), grants the State of Nevada an additional 1,000,000 acres.

(xiii) The Joint Resolution of August 21, 1911 (37 Stat. 38; 43 U.S.C. 645), grants the State of Colorado an additional 1,000,000 acres.

(xiv) The act of February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), relates to preference rights of State Carey Act entrymen upon lands restored to the public domain from Carey Act segregations.

(xv) The act of January 6, 1921 (41 Stat. 1085; 43 U.S.C. 641), further amends the Carey Act by limiting the time within which the work of reclamation must be commenced.

(xvi) The act of August 13, 1954 (68 Stat. 703) provides for the issuance of quitclaim deeds to the States for all lands patented to them under section 4 of the act of 1894 and also for the issuance of patents to the States, under certain conditions, for unpatented public lands segregated under that act as of August 13, 1954. The issuance of such quitclaims and patents to a State is conditional upon the State's quitclaiming or relinquishing all right, title, and interest in the State to any or all other lands under the Carey Act.

(b) *Character of land subject to selection.* (1) The lands selected must all be desert lands as defined by the acts of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323) as amended by section 2 of the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 321, 323, 325, 327–329), and the

decisions and regulations of the Department of the Interior therein provided for.

(2) Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

(3) Lands occupied by bona fide settlers, and lands containing valuable minerals, except as stated in paragraph (k) of this section, are not subject to selection.

(c) *Map required exhibiting plan of irrigation.* (1) Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Director, Bureau of Land Management, the State shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of section 4 of the act of August 18, 1894 (23 Stat. 422; 43 U.S.C. 641), the State must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops, for which purpose a statement by the State engineer of the amount of water available for the plan of irrigation will be necessary. The other data required can not be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable the Bureau of Land Management to judge of its practicability for irrigating all the land selected must be submitted. Upon the filing of the map showing the plan of irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the Director, Bureau of Land Management. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to application as if such reservation had never been made; and the managers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of paragraph (f) of this section.

(2) The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes in duplicate must be filed in the land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus: √. The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

(d) *List of selected lands to accompany map.* (1) The map should bear a statement of the engineer who made or supervised the preparation of the map and plan, Form 1, Appendix A, and also of the officer authorized by the State to make its selections under the act, Form 2, Appendix A. The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. Clear carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent, Form 3, Appendix A. The party appearing as agent of the State must file with the manager written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The State should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found marked "A." Lists received at the Bureau of Land Management containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole township may be designated, omitting however, the sections to which the State may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

(2) For Forms 1 to 8, referred to in paragraphs (c)(1) to (p), see Appendix A of this subpart.

(e) *Contract to be filed.* A contract in the form prescribed (Form 5 Appendix A) in duplicate, signed by the States officer authorized to execute such contract, must also be filed. A carbon copy of the contract will not be accepted. The person who executes the contract on behalf of the State must furnish evidence of his authority to do so.

(f) *Action by the manager.* For rejected selections a new list will be required, upon which the manager will note opposite each tract the objections appearing on the records and endorse thereon his reasons in full for refusing to certify the same. The State will be allowed to appeal in the manner provided for in Parts 1840 and 1850 of this chapter. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the manager is prepared to certify. On the map of lands selected the manager will mark rejected such tracts as he has rejected on the lists.

(g) *Rights-of-way over public lands not selected by State.* When the canals or reservoirs required by the plan of irrigation crossed public land not selected by the State, an application for right-of-way over such lands under sections 18 to 21, act of March 3, 1891 (26 Stat. 1101, 1102; 43 U.S.C. 946–949), should be filed separately, in accordance with the regulations under said act.

CROSS REFERENCE: For regulations concerning applications for rights-of-way under act of March 3, 1891, see §§ 2234.1–4(a) to 2234.-1–6.

(h) *Lands reserved upon approval of map.* In the preceeding sections instructions are given for the designation of the lands by the proper State authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the Secretary of the Interior, or an officer authorized by him and approved by the President. Upon the approval of the map and plan, the lands are reserved for the purposes of the act, said reservation dating from the date of the filing of the map and plan in the land office. A copy of the list is forwarded to the State authorities.

(i) *List for patent required.* When patents are desired for any lands that have been segregated, the State should file in the land office a list, to which is prefixed a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law (Form 6 Appendix A), followed by a statement of the State engineer, or other State officer whose duty it may be to superintend the reclamation of the lands (Form 7 Appendix A).

(j) *Certificate required of the State officer.* The certificate of the presiding officer of the State land board, Form 6, is required in order to show that the State laws accepting the grant of the lands have been duly complied with.

(k) *Proof of water supply and construction; minerals.* (1) The statement of the State engineer or other officer, Form 7 (Appendix A), is required in order to show compliance with the provisions of the law, that an ample supply of water has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficiently to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the State engineer must be furnished, giving all the facts as to the water supply and the nature, location, and completion of the irrigation works.

(2) If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation, such legal subdivision must be relinquished. The lands patented to

the State must be nominal in shape

opposite those previously made,

the State must be nonmineral in character, or, if mineral, they must be subject to disposal with a reservation of the mineral deposits, and must be patented with such reservation, as explained in Subpart 2033.

(l) *Lists for patent to be numbered.* These lists will be called "lists for patent," and should be numbered by the State consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

(m) *Publication and posting of notice.* When a list for patent is filed in the land office there shall also be filed by the State a notice, in duplicate, prepared for the signature of the manager, describing the land by sections, and portions of sections, where less than a section is designated (Form 8, Appendix A). This notice shall be published at the expense of the State once a week in each of five consecutive weeks, in a newspaper of established character and general circulation, to be designated by the manager as published nearest the land, as provided in § 1824.4 of this chapter.

(n) *Proof of publication.* At the expiration of the period of publication the State shall file in the land office proof of publication and of payment for the same.

(o) *Price for Indian lands.* Before patents are issued for lands within the former Southern Ute and the Ute Indian Reservations in Colorado, the State will be required to pay the price of $1.25 per acre. The State will be advised of the number of acres which will be included in the patent and payment shall be made to the manager of the proper land office, who will issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

(p) *Certification for approval and patent.* Upon the receipt of the papers in the Bureau of Land Management such action will be taken in each case as the showing may require, and all tracts that are free from valid protest, and respecting which the law and regulations have been complied with, will be patented.

(q) *Applications for extensions.* All applications for extensions of time to commence construction of the reclamation works, or to irrigate and reclaim the lands, as outlined in paragraph (a) of this section, must be submitted to the Bureau of Land Management. Such applications will be entertained only upon the showing of the happening of some event preventing compliance by the State with the requirements within the time allowed, which could not have been reasonably anticipated or guarded against, such as the destruction of irrigation works by storms, floods, or other unavoidable casualties, unforeseen structural or physical difficulties encountered in the operations, or errors in surveying and locating needed ditches or canals.

(Sec. 4, 28 Stat. 422, as amended, 43 U.S.C. 641)

§ 2222.6–2 Temporary withdrawals.

(a) *Statutory authority.* (1) Under the provisions of the amendatory act of March 15, 1910 (36 Stat. 237; 43 U.S.C. 643), public lands of the United States may be temporarily withdrawn upon proper application by a beneficiary State in order that proper surveys may be prepared and investigation made preliminary to the filing of application by such State for the segregation of such lands under the Carey Act.

(2) If such application is not filed within 1 year from the date of withdrawal, the lands so withdrawn will, as directed by the act, be immediately restored from such withdrawal.

(3) No provision is made for the extension of such a temporary withdrawal.

(b) *Applications for withdrawal.* (1) To obtain the benefits of the amendatory act of March 15, 1910, the State, through its proper official, will be required to file in the land office in the land district within which the lands sought to be withdrawn lie, an application therefor, which shall set forth the name of the individual or corporation proposing to reclaim the lands; that all of the forms and conditions imposed by the State law upon such proposer prior to segregation have been complied with; that from the showing made by the proposer (or state other source of information) it is believed that sufficient water to irrigate the whole of the lands asked to be withdrawn, over and above prior appropriations, is available; and that the proposer has either acquired title to such water or applied for the same, and that the lands are desert in character.

(2) Appended to the application should be a list of the lands asked to be withdrawn. If the lands are unsurveyed, the fact should be set forth, together with a statement that an application for the survey thereof has been filed in the office of the State Director engineer for the district in which the lands are situated.

(c) *Statement supporting application.* (1) Accompanying each application for withdrawal should be filed a statement, based upon personal examination, that the lands sought to be withdrawn are desert in character, as contemplated by the Carey Act, and are nonmineral. The application for withdrawal, however, may include lands which are subject to selection by the State with a reservation of the mineral deposits, as explained in Subpart 2023.

(2) The required statement should be made either by the proposer, his or its engineer, or by the State engineer, or one of his assistants.

(d) *Land in more than one land district.* Where the lands sought to be withdrawn are situated in more than one land district, a list must be filed in each district, describing the lands in that district.

(e) *Action of manager.* Upon the filing of such application the manager will at once note the same upon his records, and will thereafter reject all applications to enter, purchase, or select any of such lands, excepting when settlement or application to enter, purchase, or select prior to the date of filing of the State's application is alleged or disclosed of record.

(f) *Commencement of survey of proposed irrigation system.* (1) Within 3 months after the date of filing the application for withdrawal in the local office the State must file a corroborated statement by the proposer, his or its engineer, or the State engineer that the work of surveying and laying out the proposed irrigation system has been actually commenced in the field and is being energentically prosecuted. This statement should show the work accomplished and the result.

(2) In default of such showing by the State, the withdrawal will be promptly revoked.

(g) *Restoration of withdrawn tracts not susceptible of irrigation.* In the event that any of the tracts withdrawn are found to be above the proposed irrigation works, or for any other reason not susceptible of irrigation, the fact and description of the nonreclaimable land by smallest legal subdivisions should be at once communicated to the Bureau of Land Management, that they may be relieved from the withdrawal.

(h) *Causes for revocation of withdrawal.* If at any time after withdrawal it is shown that the State is not energetically prosecuting the investigation and survey of the lands, that the same are not reclaimable by the proposed system of reclamation, are not desert in character, or for any reason are not subject to the provisions of the Carey Act, or that the proposer is not proceeding in good faith, the withdrawal will be at once revoked.

(i) *Notations of withdrawals and restoration procedure.* The one year mentioned in the act as the period of withdrawal will commence on the date of approval of the application by the Bureau of Land Management.

(Sec. 4, 28 Stat. 422, as amended; 43 U.S.C. 641)

§ 2222.6–3 Segregation of land.

Lands embraced in pending applications filed by States under the act of August 18, 1894 (28 Stat. 422; 43 U.S.C. 641), and described in accompanying maps and plans of irrigation; lands withdrawn under the act of March 15, 1910 (36 Stat. 237; 43 U.S.C. 643); and lands covered by approved segregations under the said act of August 18, 1894, are not subject to settlement, application, entry, or other filings while reserved, withdrawn, or segregated, and applications to file, select, or enter shall be rejected by the manager.

(Sec. 4, 28 Stat. 422, as amended; 43 U.S.C. 641)

§ 2222.6–4 Preference right of entry on restoration of lands.

(a) *Authority.* The act approved February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), provides that on the restoration of segregated Carey Act lands, entrymen of such lands under the State laws may be accorded a preference right of entry under applicable land laws.

(b) *Director to ascertain status of lands under State laws.* Prior to the restoration to entry of lands theretofore segregated under the Carey Act, the Bureau will take steps to ascertain from the proper State officers whether any

entries have been allowed under the State law for any of the segregated lands, which are to be restored, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

(c) *Restoration.* (1) *When there are no entries under State laws.* If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under the State law on the cases of which a claim to preference right of entry might be asserted and maintained, then the act of February 14, 1920, may be disregarded in the restoration of the lands to entry.

(2) *When there are entries under State laws.* If it appears from the report of the State officers or otherwise that there are entries under the State law which may properly be the basis of preference when under this not in the order restoring the lands, the authorized officer will make suitable provision for the filing of applications to enter or select by those claiming a preference-right under the accrued February 14 1920 (41 Stat. 407; 43 U.S.C. 644).

CROSS REFERENCE: For preference rights accorded for service in World War II, see § 2033.0–3.

(d) *Conflicting applications.* In case the preference-right claim is allowed, any conflicting applications will be rejected as to the land embraced in the allowed preference claim; in case the preference-right claim is rejected, conflicting applications will then be disposed of the same as if such preference-right claim had not been filed.

(e) *Preference right.* (1) *Persons entitled.* The act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of the State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to the State laws or not in anticipation of reclaiming the lands and procuring title under the Carey Act, but for the purpose of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

(2) *Persons not entitled.* The act of February 14, 1920, does not apply to cases where the State entry has been canceled or forfeited for default on the part of the State entryman in carrying out his part of the contract, unless such default on the part of the State entryman as the result of conditions which culminated in the elimination of the lands from the project; the allowance of a subsequent entry for the same land by the State would be presumptive that the default was the fault of the State entryman whose entry was forfeited or canceled.

(Sec. 4, 28 Stat. 422, as amended; 43 U.S.C. 641)

§ 2222.6–5 Superiority of preference right.

(a) *Carey Act preference right superior to soldiers' preference rights.* Any rights to which a claimant may be entitled under the act of February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), are not affected by the act of September 27, 1944 (53 Stat. 747, 43 U.S.C. 282), as amended, giving preference rights to ex-service men, for by the terms of the act rights thereunder are made subject to "prior existing valid settlement rights and preference rights conferred by existing laws or as against equitable claims subject to allowance and confirmation"; rights under the act of February 14, 1920, are considered to be within the class described by the language quoted.

CROSS REFERENCE: For preference rights accorded for service in World War II, see § 2033.0–3 (a) and (b).

(b) *Adjudication of preference-right applications.* Applications to enter or select under applicable public land laws in the exercise of the preference rights granted by this act of February 14, 1920, will be considered and adjudicated the same as other applications under such laws, except as otherwise provided in the act of February 14, 1920; that is to say, each applicant must be qualified under the law under which he seeks to make entry or selection, and he must fully comply with such law in order to secure patent, with the single exception that one who exercises his preference right by making entry under the homestead law "shall be entitled to a credit, as residence upon his new homestead entry allowed hereunder, of the time he has actually lived upon the claim as a bona fide resident thereof."

(Sec. 4, 28 Stat. 422, as amended; 43 U.S.C. 641)

§ 2222.6–6 Quitclaims and relinquishments.

(a) *Authority.* The act of August 13, 1954 (68 Stat. 703), directs the Secretary of the Interior to issue (1) quitclaim deeds to the public land States for all lands patented to such States under section 4 of the Carey Act of August 18, 1894 (28 Stat. 422; 43 U.S.C. 641) and (2) patents for all unpatented public lands within each State segregated under that act as of August 13, 1954, for which the State issued final certificates or other evidence of right prior to June 1, 1953 or as to which equitable claims to the lands accrued prior to that date by reason of cultivation or improvement of the lands for agricultural development purposes. The act provides that the Secretary shall issue such deeds and patents to a State only if that State (i) makes proper application for the transfer of the lands before August 13, 1957, and (ii) quitclaims or relinquishes all right, title, and interest in the State to any and all other lands under the Carey Act.

(b) *Applications.* Any state desiring to secure a patent, a quitclaim deed, or both under the act must file prior to August 13, 1957, a proper application in the land office for the State in which the desired lands are located. The application must be filed in duplicate and in a form satisfactory to the appropriate land office. No standard form is prescribed for the application but it must include the following:

(1) The legal description and acreage of the lands for which a quitclaim deed is desired, together with the numbers, if any, and, when feasible, the dates of the original patents to the lands.

(2) The legal description and acreage of the lands for which a patent is desired, together with (i) the numbers and dates of the segregation lists which segregated the lands and (ii) the basis for certification of the listed lands under the act. Where the State has issued documentary evidence of a right to enter upon and cultivate the lands, the statement of the basis for certification need only be a reference to the number and date of such documents.

(3) A certification that the State prior to June 1, 1953 issued final certificates or other evidence of right to the listed segregated lands or, in the absence of such action, that equitable rights to such lands accrued prior to June 1, 1953, by reason of cultivation or improvement of the lands for agricultural development purposes.

(4) A quitclaim or relinquishment, effective as of the date of issuance of the requested patent and/or quitclaim deed, of all right, title, and interest in the State to any and all lands under the Carey Act other than those to which it is entitled under the act of August 13, 1954 (68 Stat. 703).

(5) An affidavit by the signing officer describing the authority which authorized him, on behalf of the State, to make application under the act and to quitclaim or relinquish the State's right, title, or interest in all other lands under the Carey Act.

§ 2222.9 Alaska.

§ 2222.9–1 Grant for community purposes.

(a) *Authority.* The act of July 7, 1958 (72 Stat. 339, 340), grants to the State of Alaska the right to select, within 25 years after January 3, 1959, not to exceed 400,000 acres of national forest lands in Alaska which are vacant and unappropriated at the time of their selection and not to exceed 400,000 acres of other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection. The act provides that the selected lands must be adjacent to the established communities or suitable for prospective community centers and recreational areas. The act further provides that such lands shall be selected with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other lands, and that no selection shall be made north and west of the line described in section 10 of the act without approval of the President or his designated representative.

(b) *Applicable regulations.* Unless otherwise indicated therein, the regulations in § 2222.9–4 (a) to (d) apply to the grant and selection of lands for community purposes. In addition to the requirements of § 2222.9–4(c), where the selected lands are national forest, the application for selection must be ac-

companied by a statement of the Secretary of Agriculture or his delegate showing that he approves the selection.

(c) *Approval of selections outside of national forests.* Selection of lands outside of national forests will be approved by the authorized officer of the Bureau of Land Management if, all else being regular, he finds that approval of a selection of lands adjacent to an established community will further expansion of an established community, or if the lands are suitable for prospective community centers and recreational areas.

(R.S. 2478; 43 U.S.C. 1201)

§ 2222.9–2 Grant for University of Alaska.

(a) *Statutory authority.* The act of January 21, 1929 (45 Stat. 1091), as supplemented July 7, 1958 (72 Stat. 339, 343; 48 U.S.C. 354a), grants to the State of Alaska, for the exclusive use and benefit of the University of Alaska, the unsatisfied portion of 100,000 acres of vacant, surveyed, unreserved public lands in said State, to be selected by the State, under the direction and subject to the approval of the Secretary of the Interior, and subject to the conditions and limitations expressed in the act.

(b) *Applications for selection.* (1) Applications to select lands under the grant made to Alaska by the act of January 21, 1929, will be made by the proper selecting agent of the State and will be filed in the land office of the district in which such selected lands are situated. Such selections must be made in accordance with the law and with the applicable regulations governing selection of lands by States as set forth in this Subpart 2222.

(2) Notice of selection and publication is required as provided by § 2222.9–5 (b) and (c).

(3) Each list of selections must contain a reference to the act under which the selections are made and must be accompanied by a certificate of the selecting agent showing the selections are made under and pursuant to the laws of the State of Alaska.

(4) The selections in any one list must not exceed 6,400 acres.

(5) Each list must be accompanied by a certification of the selecting agent stating that the acreage selected together with the cumulative acreage total of all prior sales for lists pending and finally approved for clear-listing or patenting does not exceed 100,000 acres.

(c) *Statement with application.* Every application for selection under the Act of January 21, 1929, must be accompanied by a duly corroborated statement making the following showing as to the lands sought to be selected.

(1) That no portion of the land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; and that at the date of the application no part of the land was claimed under the mining laws.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been or should be waived. (See § 2024.2 of this chapter.)

(3) All facts relative to medicinal or hot springs or other waters upon the lands must be stated.

(R.S. 2478; 43 U.S.C. 1201)

§ 2222.9–3 Grant for mental health program.

(a) *Authority.* The Act of July 28, 1956 (70 Stat. 709, 711, 712), as supplemented July 7, 1958 (72 Stat. 339; 343; 48 U.S.C. 46–3) (referred to in this section as "the act"), grants to the State of Alaska the right to select, within 10 years from July 28, 1956, not to exceed the unsatisfied portion of one million acres from the public lands in Alaska which are vacant, unappropriated, and unreserved at the time of selection.

(b) *Lands subject to selection; patents; minerals.* (1) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits, except that no lands may be selected that lie north and west of the line described in section 10 of the act without approval of the President or his designated representative. Where the preference provisions of § 2222.9–5(a) do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected when and if such application is allowed. Conflicting applications and offers for mineral leases, and permits, except for preference right applications filed pursuant to the mineral leasing acts and the regulations of this chapter, whether filed simultaneously with or prior or subsequent to the filing of a selection of this part, will be rejected if such selection is approved by the authorized officer of the Bureau of Land Management for survey, if applicable, and patenting.

(2) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the lands are officially surveyed.

(3) Patents issued under the act will convey to the State all mineral deposits in the selected lands.

(c) *Applications for selection.* (1) Applications for selection of lands under the act will be made by the proper selecting agent of the State and will be filed, in duplicate, in the land office of the district in which such selected lands are situated. No special form is required but it must be typewritten and must contain the following information:

(i) A reference to the act of July 28, 1956 (70 Stat. 709), as supplemented.

(ii) A certificate by the selecting agent showing:

(*a*) That the selection is made under and pursuant to the laws of the State.

(*b*) The acreage selected and the cumulative acreage of all prior selection lists pending and finally approved for clear-listing or patenting.

(*c*) His official title and his authority to make the selection on behalf of the State.

(*d*) That no portion of the selected land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the applicant, and that at the date of the application no part of the land claimed or occupied under the mining laws.

(*e*) That the selected land does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (§ 2024.2 of this chapter.)

(*f*) All the facts relative to medicinal or hot springs or other waters upon the selected lands.

(iii) If the selected lands are surveyed, the legal description of the lands in accordance with official plats of survey.

(iv) If the selected lands are unsurveyed and are described by approved protraction diagrams of the rectangular system of surveys, such description is required.

(v) If the selected lands are unsurveyed and are not described by approved protraction diagrams, a description of the lands and a map or maps, in duplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

(2) Selections must be accompanied by a filing fee of $10 for each 5,760 acres or fraction thereof in the selection which fee is not returnable.

(3) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact, if it excludes other public lands available for selection within its exterior boundaries.

(4) Segregation, publication. See § 2222.9–5 (b) and (c).

(d) *Effect of approval of selection.* Following the selection of lands by the State pursuant to the requirements of paragraph (c) of this section the State shall be authorized to lease and make conditional sales of such selected lands pending survey of the lands, if necessary, and issuance of patent.

(R.S. 2478; 43 U.S.C. 1201)

§ 2222.9–4 Grant for general purposes.

(a) *Statutory authority.* (1) The act of July 7, 1958 (72 Stat. 339–343), referred to in paragraph (a) to (d) of this section as "the act," grants to the State of Alaska the right to select, within 25 years from January 3, 1959, not to exceed 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection. The act of September 14, 1960 (74 Stat. 1024), defines vacant unappropriated, unreserved public lands in Alaska to include the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(2) The act further provides that no selection shall be made in the area north and west of the line described in section

10 thereof (72 Stat. 345) without the approval of the President or his designated representative.

(b) *Lands subject to selection; patents; minerals.* (1) The act as amended August 18, 1959 (73 Stat. 395), provides that any lease, permit, license, or contract issued under the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended, or under the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 30 U.S.C. 432 et seq.), as amended, referred to in this section as "the mineral leasing acts," shall have the effect of withdrawing the lands subject thereto from selection by the State, unless the State files an application to select such lands within a period of five years after January 3, 1959.

(2) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits. For the purposes of selection, leases, permits, licenses, and contracts issued under the mineral leasing acts of 1914 and 1920 will not be considered an appropriation of lands if the selection conforms to the requirements of subparagraph (1) of this paragraph. Where the preference provisions of paragraph (c) of this section do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected to the extent of the conflict when and if such application is allowed. Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with paragraph (d) of this section.

(3) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the exterior boundaries of the selected area are officially surveyed.

(4) (i) Where the State selects all the lands in a mineral lease, permit, license, or contract, issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act will convey to the State all mineral deposits in the selected lands. Any such patent shall vest in the State all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract. Issuance of patent will not affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(ii) Where the State selects a portion of the lands subject to a mineral lease, permit, license, or contract issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act shall reserve to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contracts. Upon the termination of the lease, permit, license, or contract, title to minerals so reserved to the United States shall pass to the State.

(c) *Applications for selection.* (1) Applications for selection under the act must conform with the requirements of § 2222.9–3(c) (1) and (2), and with the following modifications of:

(i) Section 2222.9–3(c) (1) (i) is modified to require a reference to the act of July 7, 1958 (72 Stat. 709).

(ii) Section 2222.9–3(c) (1) (i) is modified to require a statement that the selection, together with other selections under the act pending or approved, does not exceed 102,550,000 acres (400,000 acres where one of the grants for community purposes is involved).

(2) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact if it excludes other public lands available for selection within its exterior boundary. Each tract selected shall contain at least 5,760 acres unless isolated from other tracts open to selection.

(3) If the selected lands are in the area north and west of the line described in section 10 of the act, all selection made or confirmed by the act must be accompanied by a statement of the President or his designated representative showing that he approves the selection.

(4) Lands selected must be described as provided by § 2222.9–3(c).

(5) Section 2222.9–3(c) (1) (ii), and paragraph (a) (1) of this section do not apply to the extent that an application embraces a reserved or retained interest.

(d) *Effect of approval of selections.* Following the selection of lands by the State and the tentative approval of such selection by the authorized officer of the Bureau of Land Management, the State is authorized to execute conditional leases and to make conditional sales of such selected lands pending survey of the exterior boundaries of the selected area, if necessary, and issuance of patent. Said officer will notify the appropriate State official in writing of his tentative approval of a selection after determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both.

§ 2222.9–5 All grants.

(a) *State preference right of selection; waivers.* (1) The acts of July 28, 1956 (see § 2222.9–3(a)), and July 7, 1958 (see paragraph (a) of this section), provide that upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the State of Alaska shall have a preferred right of selection under the acts of 1956 and 1958, except as against prior existing valid rights, equitable claims subject to allowance and confirmation and other preferred rights of application conferred by law.

(2) Where the proper selecting agent of the State files in writing in the appropriate land office a waiver of the preference provisions of paragraph (a) of this section in connection with the proposed revocation of an order of withdrawal, the order affecting such revocation will not provide for such preference.

(b) *Segregative effect of applications.* Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the appropriate land office properly describing the lands as provided in § 2222.9–3(c) (1) (iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

(c) *Publications and protests.* (1) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at its own expense, in a designated newspaper, and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent or certification for lands selected under the regulations of this part. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(2) The State must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

(R.S. 2478; 43 U.S.C. 1201)

APPENDIX A

FORM 1.

STATE OF ------,
County of ------, ss:

------ ------ ------, being duly sworn, says he is the engineer under whose supervision the survey and plan hereon were made (or is the person employed to make, etc.); that the tracts shown hereon to be selected are each and every one desert land as contemplated by the act of Congress approved August 18, 1894 (28 Stat. 372, 422), the act of June 11, 1896 (29 Stat. 434); and the act of March 3, 1901 (31 Stat. 1133, 1188); that he is well acquainted with the character of the land herein applied for, having personally examined same; that there is not to his knowledge within the limits thereof any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that the land is not occupied by any settler; that the plan of irrigation herewith

submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary crops; and that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes.

_____ _____,
_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL] _____ _____,
Notary Public.

FORM 2.

STATE OF _____,
County of _____, ss:

_____ _____ being duly sworn, says that he is the _____ (designation of office) authorized by the State of _____ to make desert-land selections under the act of Congress approved August 18, 1894 (28 Stat., 372, 422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133, 1188),[a] that the plan of irrigation and survey herewith is submitted under authority of the State of _____; and that the tracts shown hereon to be selected are each and every one desert land, as contemplated by the said acts of Congress, none being of the classes designated as timber or mineral lands.

_____ _____,
_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19_____.

[SEAL] _____ _____,
Notary Public.

A.

STATE OF _____,
UNITED STATES LAND OFFICE,
_____ _____, 19_____.

_____ _____, the duly authorized agent of the State of _____, under and by virtue of an act of Congress approved August 18, 1894 (28 Stat., 372, 422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133, 1188),[a] and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, hereby makes and files the following list of desert public lands which the State is authorized to select under the provisions of the said acts of Congress:

---

[a] The States of Idaho and Wyoming must insert here a reference to the act of May 27, 1908 (35 Stat., 317, 347).

The State of Colorado must insert here a reference to the act of March 11, 1907 (34 Stat., 1057), when the lands are within the former Southern Ute Indian Reservation, and to the act of February 24, 1909 (Public No. 255), when the lands are within the former Ute Indian Reservation.

FORM 3.

STATE OF _____,
County of _____, ss:

I, _____, being duly sworn, depose and say that I am _____ (designation of office) authorized by the State of _____ to make desert-land selections under the act of Congress approved August 18, 1894 (28 Stat., 372, 422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat. 1133, 1188);[a] that the foregoing list of lands which I hereby select is a correct list of lands selected under said acts; that the lands are vacant, unappropriated, are not interdicted timber nor mineral lands, and are desert lands as contemplated by the said acts of Congress.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19_____.

[SEAL] _____ _____,
Notary Public.

FORM 4.

UNITED STATES LAND OFFICE,
_____ _____,
_____ _____, 19_____.

We hereby certify that we have carefully and critically examined the foregoing list of lands selected _____, 19____, by _____ _____, the duly authorized agent of the State of _____, under the provisions of the act of Congress approved August 18, 1894 (28 Stat., 372, 422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133, 1188);[a] that we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and that the same are not nor is any part thereof returned and denominated as mineral or timber lands; nor is there any homestead or other valid claim to any portion of said lands on file or of record in this office; and that the said lands are, to the best of our knowledge and belief, desert lands, as contemplated by the said acts of Congress; and that the fees, amounting to $_____, have been paid upon the said area of _____ acres.

_____ _____, *Register.*
_____ _____, *Receiver.*

FORM 5.

These articles of agreement, made and entered into this _____[b] day of _____,[b] A.D. 19__,[b] by and between _____ _____,[b] Secretary of the Interior, for and on behalf of the United States of America, party of the first part, and _____ _____, for and on behalf of the State of _____, party of the second part, witnesseth:

That in consideration of the stipulations and agreements hereinafter made, and of the fact that said State has, under the provisions of section 4 of the act of Congress approved August 18, 1894, of the act of Congress approved June 11, 1896, and of the act of Congress approved March 3, 1901,[a] through _____ _____, its proper officer, thereunto duly authorized, presented its proper application for certain lands situated within said State and alleged to be desert in character and particularly described as follows, to wit: List No. — (here insert list of lands and total area), and has filed a map of said lands and exhibited a plan showing the mode by which it is proposed that said lands shall be irrigated and reclaimed and the source of the water to be used for that purpose, the said party of the first part contracts and agrees, and, by and with the consent and approval of _____ _____,[b] President thereof, hereby binds the United States of America to donate, grant, and patent to said State, or to its assigns, free from cost for survey or price,[c] any particular tract or tracts of said lands, whenever an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim the same, in accordance with the provisions of said acts of Congress, and with the regulations issued thereunder, and with the terms of this contract, at any time within ten years from the date of the approval of the said map of the lands.

It is further understood that said State shall not lease any of said lands or use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement; and that in selling and disposing of them for that purpose the said State may sell or dispose of not more than 160 acres to any one person, and then only to bona fide bidders who are citizens of the United States or who have declared their intention to become such citizens; and it is distinctly understood and fully agreed that all persons acquiring title to said lands from said State prior to the issuance of patent, as hereinafter mentioned, will take the same subject to all the requirements of said acts of Congress and to the terms of this contract, and shall show full compliance therewith before they shall have any claim against the United States for a patent to said lands.

It is further understood and agreed that said State shall have full power, right, and authority to enact such laws, and from time to time make and enter into such contracts and agreements, and to create and assume such obligations in relation to and concerning said lands as may be necessary to induce and cause such irrigation and reclamation thereof as is required by this contract and the said acts of Congress; but no such law, contract, or obligation shall in any way bind or obligate the United States to do or perform any act not clearly directed and set forth in this contract and said acts of Congress, and then only after the requirements of said acts and contract have been fully complied with.

Neither the approval of said application, map, and plan, nor the segregation of said land by the Secretary of the Interior, nor anything in this contract, or in the said acts of Congress, shall be so construed as to give said State any interest whatever in any lands upon which, at the date of the filing of the map and plan hereinbefore referred to, there may be an actual settlement by a bona fide settler, qualified under the public land laws to acquire title thereto, or which are known to be valuable for their deposits of coal or other minerals.

It is further understood and agreed that as soon as an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of said lands the said State or its assigns may make proof thereof under and according to such rules and regulations as may be prescribed therefor by the Secretary of the Interior, and as soon as such proof shall have been examined and found to be satisfactory patents shall issue to said State, or to its assigns, for the tracts included in said proof.

The said State shall, out of the money arising from its disposal of said lands, first reimburse itself for any and all costs and expenditures incurred by it in irrigating and reclaiming said lands, or in assisting its assigns in so doing; and any surplus then remaining after the payment of the cost of such reclamation shall be held as a trust fund, to be applied to the reclamation of other desert lands within said State.

This contract is executed in duplicate, one copy of which shall be placed of record and remain on file with the Commissioner of the General Land Office, and the other shall be placed of record and remain on file with the proper officer of said State, and it shall be the duty of said State to cause a copy thereof, together with a copy of all rules and regulations issued thereunder or under said acts of Congress, to be spread upon the deed records of each of the counties in said State in which any of said lands shall be situated.

In testimony whereof the said parties have hereunto set their hands the day and year first herein written.

_____ _____,
Secretary of the Interior.
State of _____.
By _____.

---

[a] See footnotes under Forms 1 and 2.

[b] These blanks should be left vacant by the State agent.

[a] [b] See footnotes under Forms 1 and 2.

APPROVAL

To all to whom these presents shall come, greeting:

Know ye, that I, ------ ------,[a] President of the United States of America, do hereby approve and ratify the attached contract and agreement, made and entered into on the ------[a] day of ------,[a] 19--,[c] by and between ------ ------,[a] Secretary of the Interior, for and on behalf of the United States, and ------ ------, for and on behalf of the State of ------, under section 4 of the act of Congress approved August 18, 1894, the act approved June 11, 1896, and the act approved March 3, 1901.[b]

------ ------.

FORMS FOR VERIFICATION AND PUBLICATION OF LISTS FOR PATENT.

FORM 6.

I, --------- ---------, do hereby certify that I am the --------- --------- (designation of office) of the State of --------- ---------; that I am charged with the duty of disposing of the lands granted to the State in pursuance of section 4, act of August 18, 1894 (28 Stat., 372, 422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133, 1188);[b] and that the laws of the said State relating to the said grant from the United States have been complied with in all respects as to the following lists of lands, which is hereby submitted on behalf of the said State for the issuance of patent under said acts of Congress.

--------- ---------,
--------- ---------.

[Here add list of lands.]

FORM 7.

To follow list of lands.

STATE OF ---------,
County of ---------, ss:

--------- ---------, being duly sworn deposes and says that he is the ---------- --------- (designation of office) of the State of ------, charged with the duty of supervising the reclamation of lands segregated under section 4, act of August 18, 1894 (28 Stat., 372, 422), the act of June 11, 1896 (29 Stat. 434), and the act of March 3, 1901 (31 Stat., 1133, 1188),[a] that he has examined the lands designated on the foregoing list, and that an ample supply of water has been actually furnished (in a substantial ditch or canal, or by artesian wells or reservoirs) for each tract in said list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops.

--------- ---------,
--------- ---------.

Subscribed and sworn to before me this ---- day of ------, 19--.

[SEAL] --------- ---------,
Notary Public.

FORM 8

Form for published notice.

UNITED STATES LAND OFFICE,

---------, ---------, 19--.

To whom it may concern:

Notice is hereby given that the State of ------ has filed in this office the following list of lands, to wit, ------, and has applied for a patent for said lands under the acts of August 18, 1894 (28 Stat., 372, 422), June 11, 1896 (29 Stat. 434), and March 3, 1901 (31 Stat., 1133, 1188),[a] relating to the granting of not to exceed a million acres[b] of arid land to each of certain States; and that the said list, with its accompanying proofs, is open for the inspection of all persons interested, and the public generally.

Within the next sixty days following the date of this notice, protests or contests against the claim of the State to any tract described in the list, on the ground of failure to comply with the law, on the ground of the nondesert character of the land, on the ground of a prior adverse right, or on the ground that the same is more valuable for mineral than for agricultural purposes, will be received and noted for report to the General Land Office at Washington, D.C.

------ ------, *Register.*
------ ------, *Receiver.*

[a] See footnotes under Forms 1 and 2.

[b] These blanks should be left vacant by the State agent.

[c] The words "or price" must be eliminated before the contract is signed on behalf of the State of Colorado when the lands involved are within the former Southern Ute or Ute Indian reservations.

Subpart 2224—Railroad Grants

AUTHORITY: The provisions of this Subpart 2224 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2224.1 Adjustment of railroad grants (act of March 3, 1887).

§ 2224.1–1 Lands erroneously patented or certified to a railroad company.

(a) (1) The fourth section of the act of March 3, 1887 (24 Stat. 557; 43 U.S.C. 897) relates to all lands which have been erroneously certified or patented on account of railroad grants, except those mentioned in the third section, and by the grantee company sold to citizens or to persons who have declared their intention to become citizens of the United States; and provides that after the title to such lands has been restored to the United States as contemplated by the second section of the act, persons who have purchased such land in good faith, their heirs or assigns, shall be entitled to the lands upon making proof at the proper land office, whereupon patents shall issue relating back to the date of the original certification or patenting, and the grantee company will be required to pay the United States for such lands at the price at which other similar lands are legally held by the Government.

(2) The purchaser from the company is not debarred by the act from recovering from the company the amount of purchase money paid by him less the amount paid by the company to the United States for the land.

(3) A mortgage or pledge of such lands is not a sale within the intention of the act.

(4) No forfeiture is declared by this act against any land grants for conditions broken (and no entry is authorized for lands legally within such grant), but no rights of the United States on account of breach of conditions are waived by the act.

(b) An applicant for land under this section will be required to publish notice of intention to make proof as in homestead cases, and the proof must show:

(1) That he is, or has declared his intention to become, a citizen of the United States.

(2) That he is a bona fide purchaser from the company or some person claiming title under it, and the character of the instrument conveying the land to him.

(3) The amount of purchase money paid to the company.

(4) What part, if any, of the purchase money paid to the company has been refunded to him or any person acting as his agent

(5) Whether he has instituted proceedings against the company for the recovery of any portion of the purchase money; if so, for what portion.

(6) The value and character of the improvements, if any, made or acquired by him upon the land.

(7) Whether there is any person of the first class under the third section of the act entitled to the right of entry under the homestead laws.

(c) Upon the submission of satisfactory proof as prescribed in paragraph (b) (1) to (7) of this section the manager will issue certificate, in duplicate, numbered in the regular cash series with annotations thereon showing that the entry is allowed without payment under the fourth section of the act of March 3, 1887 (24 Stat. 557; 43 U.S.C. 897).

CROSS REFERENCE: For regulations concerning publication of proof notices, see § 1824.4 of this chapter.

§ 2224.1–2 Bona fide purchasers from railroads of lands excepted from grant.

(a) (1) The fifth section of the act of March 3, 1887 (24 Stat. 557; 43 U.S.C. 898) relates to lands within the limits of railroad grants, co-terminus with constructed portions of the lines of road, not conveyed on account of, but excepted from, the grants.

(2) Under this section, when the company has sold to citizens of the United States or persons who have declared their intention to become such citizens, the numbered sections prescribed in the grant and co-terminus with the constructed portions of the road, within either the granted or indemnity limits, and which upon the adjustment of the grant are shown to be excepted from the operation of the grant, it shall be lawful for such purchasers (if their purchases are bona fide) to purchase said land from the Government by payment of the Government price for like lands, unless said lands were at the date of purchase in the bona fide occupancy of adverse claimants under the preemption or homestead laws, in which case the preemptor or homestead claimant may be permitted to perfect his proof unless he has since voluntarily abandoned the land.

(3) Under the last proviso of said section, however, if a settlement was made on said lands subsequent to December 1, 1882, by persons claiming the same under the settlement laws of the United States, it will defeat the right of the purchaser, whether said purchase was made prior or subsequent to December 1, 1882, and the settler will be allowed to prove up for said lands as in other like cases.

(b) Applicants to purchase under this section will be required to publish notice

[a] See footnotes under Forms 1 and 2.

[b] In the cases of Idaho and Wyoming 2,000,000 acres.

of intention as directed by instructions under the third and fourth sections, and the proof must show:

(1) That the tract was of the numbered sections prescribed by the grant.

(2) That it was co-terminous with constructed parts of said road.

(3) That it was sold by the company to the applicant, or one under whom he claims, as a part of its grant.

(4) That it was excepted from the operation of the grant.

(5) That at the date of said sale it was not in the bona fide occupancy of adverse claimants under the preemption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned.

(6) That it has not been settled upon subsequent to the 1st day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws.

(7) That the applicant is, or has declared his intention to become, a citizen of the United States.

(8) And that he, or one under whom he claims, was a bona fide purchaser of the land from the company.

(c) The proof upon the points as outlined in paragraph (b) of this section, being found satisfactory, the entry will be allowed and the usual cash certificate and receipts will be issued thereon reciting the fact that the entry is in accordance with the fifth section of the act of March 3, 1887 (24 Stat. 557; 43 U.S.C. 898).

(d) No entry will be allowed under this section until it shall have been finally determined by this Department that the land was excepted from the grant.

§ 2224.2 Adjustment of conflicts involving Northern Pacific Railroad.

§ 2224.2–1 Act of July 1, 1898.

(a) *When individual claimant may select other land.* Upon the filing with and acceptance by the Bureau of Land Management of a relinquishment by a qualified settler, or his heirs or assigns for any part of an odd-numbered section in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad, now Railway Company pursuant to the act of July 1, 1898 (30 Stat. 620), the individual claimant, upon receiving notice of the acceptance of his relinquishment, will be entitled, upon proper application, to select other lands, according to the condition and limitations of said act.

(b) *Applications to select lieu lands.* Applications to select lieu lands under the act of July 1, 1898, by an individual claimant must be presented to the land office of the district within which the lands selected are situate. The application must particularly state the description and acreage of the lands relinquished, the acceptance by the Bureau of Land Management of the relinquishment, and the description of the lands selected, and must be accompanied by proof that the land selected is of the character subject to selection. If the records of the land office do not show to the contrary, the character of the land will be deemed to be prima facie established where the application is supported by the statement of the individual claimant, based upon a personal examination of the land.

(c) *Selection segregates land.* When any lands, whether surveyed or unsurveyed, have been selected under the act of July 1, 1898, by an individual claimant, no right thereto can be initiated by settlement or entry while such selection remains of record.

(d) *Proof of individual claimant.* Where lands are selected by an individual claimant in lieu of lands the claim to which has not been carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, the claimant will be required to perfect his right to the lands selected by compliance with the law relating to that class of claims, and to submit proof thereof in the usual way, but credit will be given for his bona fide residence, improvements, cultivation, or reclamation, as the case may be, and for any payment of fees or purchase money upon the land relinquished, it being the purpose of the act of July 1, 1898, to give individual claimants the same status with respect to the lieu lands selected by them which they occupied with respect to the lands relinquished.

(e) *Unsurveyed land.* (1) *Not to be patented.* Unsurveyed lands will in no event be patented until after survey.

(2) *Patenting after survey.* Unsurveyed lands selected by an individual claimant in lieu of lands the claim to which has been regularly carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, will not be patented until after the expiration of 4 months from the date of the receipt at the land office of the approved plat of the township embracing the lands so selected; and surveyed lands selected by an individual claimant in lieu of lands the claim to which has reached a like status will not be patented until after the expiration of 4 months from the date of selection.

§ 2224.2–2 Act of March 2, 1901.

(a) *Authority.* The act of March 2, 1901 (31 Stat. 950), extends the provisions of the act of July 1, 1898 (30 Stat. 620) to certain claims to lands within the indemnity limits of the Northern Pacific Railroad grant.

(b) *Governing regulations.* As far as applicable, the regulations under the act of July 1, 1898, § 2224.2–1, will be followed in the adjustment of claims of individuals under the act of March 2, 1901.

§ 2224.2–3 Act of May 17, 1906.

(a) *Authority.* The act of May 17, 1906 (34 Stat. 197), extends the acts of July 1, 1898 (30 Stat. 620) and March 2, 1901 (31 Stat. 950) to certain claims in Washington and Oregon.

(b) *Governing regulations.* The regulations issued under the act of July 1, 1898, § 2224.2–1, will be followed so far as applicable, in the adjustment of claims of individuals under the act of May 17, 1906.

§ 2224.2–4 Act of February 27, 1917.

(a) *Authority.* The act of Congress approved on February 27, 1917 (39 Stat. 946) provides for the adjustment of conflicting claims to Northern Pacific Railway lands, in Washington.

(b) *Adjustment of claims.* The regulations under the act of July 1, 1898, § 2224.2–1, will govern, so far as applicable, claims of individuals arising under the said act of February 27, 1917.

§ 2224.3 Patents for lands sold by railroad carriers (Transportation Act of 1940).

§ 2224.3–1 Authority.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of 1940, approved on September 18, 1940 (54 Stat. 934), authorizes the issuance of patents for the benefit of certain innocent purchasers for value of land-grant lands from railroad carriers which have released their land-grant claims.

NOTE: Notices of releases of land grant claims by railroad carriers listing the carriers, the date of the approval of the release and the land-grant predecessors involved dated Dec. 17, 1940, May 17, 1941 and June 29, 1942, appear at 6 F.R. 449, 2634, and 7 F.R. 5319.

§ 2224.3–2 Lands for which applications may be made.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of 1940 provides that in the case of a railroad carrier, or a predecessor, which received a land grant to aid in the construction of any part of its railroad, the laws relating to compensation for certain Government transportation services shall continue to apply as though subsection (a) of section 321 had not been enacted unless the carrier shall file on or before September 18, 1941, with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands so granted, claimed to have been granted or claimed should have been granted. Section 321 provides further that nothing therein shall be construed as preventing the issuance of patents confirming the title to such uncertified or unpatented lands as the Secretary of the Interior shall find have been sold prior to September 18, 1940, to innocent purchasers for value. Subsection (b) of section 321 authorizing the issuance of such patents is not an enlargement of the grants, and does not extend them to lands not already covered thereby and, therefore, has no application to lands which for various reasons, such as mineral character, prior grants, withdrawals, reservations, or appropriation, were not subject to the grants. It does apply, however, to lands selected under remedial or lieu acts supplemental to the original grants as well as to primary and indemnity lands. Classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f), will not be required where the sold land is such as the company was authorized by law to select.

§ 2224.3–3 Applications.

Application, and supporting evidence, must be filed by the carrier in the proper land office, accompanied by a nonrefundable application service charge of $10. The lands listed in any one application must be limited to those embraced in a single sale upon which the claim for patent is based. The application should state that it is filed under the railroad land grant act involved, properly cited, and subsection (b) of section 321, Part II, Title III of the Transportation Act of 1940 (54 Stat. 954). The application must be supported by a showing that the land is of the character which would pass under the grant involved, and was not by some superior or prior claim, withdrawal, reservation, or other reason, excluded from the operation of the grant. Full details of the alleged sale must be furnished, such as dates, the terms thereof, the estate involved, consideration, parties, amounts and dates of payments, made, and amounts due, if any, description of the land, and transfers of title. The use, occupancy, and cultivation of the land and the improvements placed thereon by the alleged purchaser should be described. All statements should be duly corroborated. Available documentary evidence, including the contract or deed, should be filed, which may be authenticated copies of the originals. An abstract of title may be necessary, dependent upon the circumstances of the particular case. No application for a patent under this act will be favorably considered unless it be shown that the alleged purchaser is entitled forthwith to the estate and interest transferred by such patent. Evidence of a recorded deed of conveyance from the carrier to the purchaser may be required. Where the company has on file an application in which the sold lands embraced, it need not file a new application, but may file a request for amendment of the pending application to come under the Transportation Act of 1940, together with the showing, supra, required as to the bona fide sale.

§ 2224.3–4 Publication of notice.

The manager shall direct the publication of notice of the application. The notice will be published at the carrier's expense in a newspaper of general circulation in the vicinity of the land. If a daily newspaper be designated, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, for five consecutive issues; and if semiweekly, in either issue for five consecutive weeks. The carrier must furnish evidence of such publication in due course. Notice need not be published, in case of amendment of a pending application, where publication has already been had.

§ 2224.3–5 Surveying and conveyance fees.

The carrier must pay the cost of the survey of the land, paying also one-half the cost of any segregation survey in accordance with the laws and regulations pertaining to the survey and patenting of railroad lands. (See 43 U.S.C. 881 et seq.; also Subpart 1822 of this chapter.)

§ 2224.3–6 Patents.

If all be found regular and in conformity with the governing law and regulations, patent shall be issued in the name of the grantee under the railroad grant, the carrier paying the costs of preparation and issuance of the patent.

Subpart 2225—Pittman Act

AUTHORITY: The provisions of this Subpart 2225 issued under sec. 9, 41 Stat. 295; 43 U.S.C. 360.

§ 2225.0–3 Authority.

The patenting of public lands, in Nevada, or the discovery and development of underground waters, is authorized by the act of Congress approved October 22, 1919 (41 Stat. 293; 43 U.S.C. 351–355, 357–360), entitled "An act to encourage the reclamation of certain arid lands in the State of Neveda, and for other purposes," as amended by the act of September 22, 1922 (42 Stat. 1012; 43 U.S.C. 356).

§ 2225.0–6 Beneficiaries.

(a) The act referred to in the preceding section, as the title indicates, is limited in its operation to lands in the State of Nevada and is designed to encourage the development and utilization of subterranean waters for irrigation purposes. It confers upon the Secretary of the Interior authority to grant permits to citizens of the United States, or associations of such citizens, giving the exclusive right to explore not to exceed 2,560 acres of land selected by them.

(b) The only qualifications provided in the act for persons receiving the benefits thereof are that the applicant, or each member of an association of applicants, shall be a citizen of the United States; that he shall not be a beneficiary under any other application or permit under this act for land situated within an area of 40 miles square, and that he has not been a permitee under any other permit under this act, which has been canceled for failure to comply with its terms.

(c) Married women, if their interest is actual and bona fide, have the same privileges as unmarried persons. A corporation is not considered as an association of persons within the meaning and purpose of the act.

(d) A permit under the act is not assignable, but the interest of a deceased permittee will pass to his legal representative.

(e) The 40-mile square limitation is construed to mean an area of that extent in which the lands covered by a permit theretofore granted are in the approximate center; to avoid possible violation of this provision of the act, applicants for more than one permit are advised not to include in their applications for additional permits any lands within less than 20 miles of any boundary of the lands included in any other application or permit in which the applicant is interested.

§ 2225.0–7 Lands subject to disposition under act.

Lands to be designated and made subject to disposition under the act of October 22, 1919, as amended, are those public lands which are unreserved, unappropriated, nonmineral, nontimbered, and not known to be susceptible of successful irrigation from any known source of water supply at a reasonable cost.

§ 2225.1 Procedures.

§ 2225.1–1 Petitions and applications.

(a) A person who desires to apply for a permit to explore for water under the terms of this act must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the Pittman Act, no petition is required. The documents must be filed in the land office at Reno, Nevada.

(b) All persons filing applications must pay a nonrefundable application service fee of $75.

§ 2225.1–2 Conditions of permits.

Permits will be granted only upon condition that active operations be begun for the development of underground water within 6 months from date of approval and continued diligently in good faith until water has been developed in quantity sufficient for the practicable irrigation of not less than 20 acres, or until the date of expiration of the permit; and if the permittee shall not continue such operations in good faith and with reasonable diligence, or if he shall violate any of the terms of the permit, upon presentation of satisfactory proof thereof, the permit will be forthwith canceled and he will not again be granted a permit under the act. (See § 2225.2–3.)

§ 2225.1–3 Progress reports.

At or near the end of the 6 months' period, beginning with the date of the permit, and again at the end of the first year of the life of the permit, if final proof of water development and reclamation has not been submitted, the permittee, or at least one member of an association of permittees, must file in the proper district land office a properly executed statement, corroborated by at least two disinterested witnesses, having knowledge of the facts, showing when the work of exploration was begun, in what manner and to what extent it has been prosecuted, and what results have been obtained. (See § 2225.2–3.)

§ 2225.2 Proof.

§ 2225.2–1 Showing required.

Unless granted an extension of time the permittee is allowed 2 years from the date of his permit in which to complete the work of exploration, and whenever he shall within that time satisfactorily establish that sufficient water has been discovered, developed, and made permanently available to produce a profitable agricultural crop other than native grasses, upon not less than 20 acres of the land described in the permit, he will be entitled to patent for one-fourth of the land embraced in the permit. No

more perfunctory or questionable com-

Four witnesses may be named in the

§ 2225.2–3 Extensions of time

the land be surveyed. If the land be

mere perfunctory or questionable compliance with the law will be accepted. It must appear that an agricultural crop has been actually raised—not necessarily a paying or profitable crop, but such a crop as will satisfy the Secretary of the Interior that in time and under ordinary circumstances profitable crops of some sort can be produced from the land. No patent will be granted until the full 20 acres have been cleared, leveled, ditched, plowed, fenced, and an agricultural crop actually planted and raised by irrigation, all in accordance with good farming practice. The wells, pumps, or other works and equipment for the development and supplying of water must be of a permanent and dependable character, suitable for use year after year. A detailed statement of costs of irrigation and production of crops from such water supply will be required; to this end, accurate account should be kept of such costs. No patent can be granted under the act if the cost of irrigation from the developed water supply is practically prohibitive. The act requires a successful development and demonstration of the use of subterranean water, as the principal condition precedent for patent.

§ 2225.2–2 Time for making.

(a) Final proof of the discovery, development, and availability of sufficient water to justify patent may be made by the permittee, or, in case of his death, by his heirs, executors, or administrators, or in case the permittee is an association of individuals, by any member of such association, at any time after such discovery and development as hereinbefore defined, but must be made within 2 years after the date of the permit; but an additional period, not to exceed 1 year, may, upon proper showing, be allowed within which to make the required proof of actual irrigation and cultivation.

(b) When a permittee has reclaimed the land and is ready to make final proof he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land selected by him for patent and give the serial number of the permit and name of the claimant. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in the notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) This notice must be published once a week for 5 successive weeks in a newspaper of established character and general circulation published nearest the land, and it must also be posted in a conspicuous place in the land office for the same period of time. The permittee must pay the cost of the publication. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the certificate of the publisher of the newspaper or by some one authorized to act for him. The manager will certify to the posting of the notice in the land office.

(d) On the day set in the notice (or in the case of accident or unavoidable delay, within 10 days thereafter) and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

(e) Final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 1821.3–2 of this chapter.

(f) The claimant must pay to the manager a nonrefundable service charge of $25 and also the costs of reducing testimony to writing, as determined by the manager.

§ 2225.2–3 Extensions of time.

(a) The act of September 22, 1922 (42 Stat. 1012; 43 U.S.C. 356), authorizes the allowance under certain conditions of an extension of time for a period not exceeding 2 years for the beginning, recommencement, or completion of the work of water development and the submission of final proof of reclamation. This does not mean that the extension will be granted as a matter of course, and applications for extension will not be granted unless it be clearly shown that the failure to complete the work of exploration and water development or of reclamation, as the case may be, within the required period was due to no fault on the part of the permittee but to some unavoidable delay for which he was not responsible and could not have readily foreseen.

(b) A permittee who desires to make application for extension of time should file with the manager an application setting forth fully the facts, showing how and why he has been prevented from beginning or completing the work of water development and making final proof within the regular period. The application must be corroborated by at least two witnesses who have personal knowledge of the facts.

(c) All applications for extension of time for the beginning, recommencement, or completion of the work of water development and submission of final proof must be accompanied by an application service fee of $10 which will not be returnable.

(d) The manager is required to suspend any application for extension of time if he considers it defective in form or substance and to allow the applicant 30 days to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made. After the expiration of the time thus granted the original application and the amendments or exceptions, as the case may be, will be given appropriate consideration by the manager.

§ 2225.3 Patent.

§ 2225.3–1 Form of lands selected for patent; survey.

The land selected for patent shall be in compact form according to legal subdivisions of the public-land surveys, if the land be surveyed. If the land be unsurveyed, the permittee may, at any time during the life of his permit, apply to the State Director for a survey of the land for which he intends to make application for patent. The State Director will thereupon make an estimate of the cost and call on the permittee for a deposit of the amount of the estimate. If the deposit made should prove insufficient, an additional deposit will be called for. If the applicant has not taken steps to procure a survey before submitting final proof, after final proof has been submitted and examined, if same is found satisfactory and acceptable, and in the meantime the public-land system of surveys has not been extended over the lands in question, call will be made on the permittee to make the necessary deposit to cover the cost of survey in which case the issuance of patent will be suspended until the survey is made and accepted. Wherever practicable such official survey will be an extension of the regular system of township surveys, in which case the selection for patent must be conformed to the legal subdivisions of such survey.

§ 2225.3–2 Minerals reserved.

The act provides that all entries made and patents issued under its provisions shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands entered and patented, together with the right to prospect for, mine, and remove the same.

§ 2225.3–3 Disposal of permit lands after patent.

On the issuance of patent the remaining area within the limits of the land embraced in the permit will thereafter be subject to classification and disposition under section 7 of the act of June 28, 1934, (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f).

§ 2225.4 Contests and protests.

Contests and protests may be made against applications, permits, and final proofs under the act of October 22, 1919, as amended, the same as other entries or selections under the public land laws, and same will be disposed of in accordance with Parts 1840 and 1850 of this chapter, so far as applicable. No preference right, however, can be gained by

such contest or protest, but if successful the entire area embraced in the permit will revert to the public domain and the land will be subject to the applicable public land laws.

Subpart 2226—Desert Land Act

AUTHORITY: The provisions of this Subpart 2226 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2226.0–1 Purpose.

(a) It is the purpose of the statutes governing desert-land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

(b) Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply, more elaborate and expensive systems of irrigation are required, the cost of water rights correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

§ 2226.0–3 Authority.

The act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323) as amended by the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 321, 323, 325, 327–329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 2226.0–6 Who may make desert-land entry.

(a) *Citizenship.* (1) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 2226.0–7(d) and 2226.1–1(a) can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(2) The citizenship of a married woman must be shown, as required by § 1811.1–2 of this chapter.

(3) No assignments of desert-land enclaimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

(b) *Second and additional entries.* A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except under the conditions described in subparagraphs (1) and (2) of this paragraph.

(1) Under the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted to make another entry or to take one or any part thereof by assignment except where subparagraph (2) of this paragraph applies.

(2) The act of June 16 1955 (69 Stat. 138) authorizes any person who prior to June 16, 1955, made a valid desert-land entry on lands subject to the acts of June 22, 1910 (36 Stat. 583; 30 U.S.C. 33–85), or of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), if otherwise qualified to enter as a personal privilege not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 2226.0–7(b).

§ 2226.0–7 Land subject to disposition.

(a) *Land that may be entered as desert land.* (1) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Subpart 2023, nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L.D. 522 and 42 L.D. 524.)

(2) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with §§ 2023.0–3 to 2023.0–7. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

(b) *Quantity of lands that may be entered.* An entry of lands under the act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(1) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), is limited to 160 acres.

(2) An entryman may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres (acts of August 30, 1890; 26 Stat. 391; 43 U.S.C. 212; and of February 27, 1917; 39 Stat. 946; 43 U.S.C. 330).

(c) *Economic unit requirements, compactness.* (1) One or more tracts of public lands may be included in a desert land entry and the tracts so entered need not be contiguous. All the tracts entered, however, shall be sufficiently close to each other to be managed satisfactorily as an economic unit. In addition, the lands in the entry must be in as compact a form as possible taking into consideration the character of available public lands and the effect of allowance of the entry on the remaining public lands in the area.

(2) In determining whether an entry can be allowed in the form sought, the authorized officer of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjoining lands, the availability of public lands near the lands sought, the private lands farmed by the applicant, the farming systems and practices common to the locality and the character of the lands sought, and the practicability of farming the lands

as an economically feasible operating

law and must evidence good faith on the

as an economically feasible operating unit.

(3) In addition to the other requirements of the regulations in this part, applicants for desert land entry must submit with their applications information showing that the tracts applied for are sufficiently close to each other to be managed satisfactorily as an economic unit and that the lands in the application are as compact as possible in the circumstances.

(d) *Entries restricted to surveyed lands since March 28, 1908 as claims on unsurveyed lands.* (1)(i) Prior to the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the land office.

(ii) Unsurveyed public land withdrawn by Executive Orders Nos. 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. (See Subpart 2411.)

(2) To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant.

§ 2226.1 Procedures.

§ 2226.1–1 Petitions and applications.

(a) *Filing and fees.* (1) A person who desires to enter public lands under the desert land laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition is required. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana.

(2) All applications must be accompanied by an application service fee of $16 which is not returnable, and the payment of 25 cents per acre for the lands therein described as required by law.

(b) *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them.

(c) *Execution of applications and proofs; time for filing of applications.* (1) Applications and proofs, except final proofs required by R.S. 2294 (43 U.S.C. 254), must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 1821.3–2 of this chapter.

(2) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the land office.

(d) *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. The manager will examine the evidence submitted in such applications and either reject defective applications or require additional evidence.

§ 2226.1–2 Assignment.

(a) *Lands which may be assigned.* While by the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

CROSS REFERENCE: For assignment of desert-land entries within Government reclamation projects, see § 2226.4–5(a).

(b) *Qualifications of assignees.* (1) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under § 2226.0–6 to make a second or an additional entry, he cannot take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second or additional entry.

(2) A person who has the right to make a second or additional desert-land entry may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned.

(3) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(c) *Showing required of assignees; recognition of assignments.* (1) As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(2) An assignee must file with his deed of assignment, a statement on a form approved by the Director, showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with Subpart 1811 of this chapter. If the assignee is a woman, she

should in all cases state whether she is married, and if so, she must make the showing required by Subpart 1811 of this chapter. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L.D. 541, 33 L.D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L.D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L.D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgements of deeds. The assignee must furnish a statement on a form approved by the Director as to his qualifications.

(3) No assignments of desert-land entries or parts of entries are conclusive until examined in the land office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L.D. 90 and 48 L.D. 519.

(4) All applications for recognition of assignment of desert-land entries must be accompanied by an application service fee of $10 which will not be returnable.

§ 2226.1–3 When lands may be sold, taxed, or mortgaged.

(a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so contained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the act of June 13, 1930 (46 Stat. 581; 43 U.S.C. 455, 455a–455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrances may file in the proper land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

(e) The filing of all notices of recordation of claim by transferred, mortgages, or other encumbrancer under this section must be accompanied by a service charge of $10 which will not be returnable.

§ 2226.1–4 Annual proof.

(a) *Showing required.* (1) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(2) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have general knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

(b) *Acceptable expenditures.* (1) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(2) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L.D. 106.)

(c) *Expenditures not acceptable.* (1) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, cannot receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L.D. 601 and 42 L.D. 523.)

(2) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rollling, or what is known in some localities as railing the land will not be accepted.

(3) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including

its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

(d) *Procedure where proof is not made when due.* Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

(e) *Desert land entry in more than one district.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the manager of the adjoining district by letter of the date when the annual proof is filed.

(f) *Extensions of time.* (1) The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L.D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

(2) Extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

(g) *Submission of proof before due date.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

§ 2226.1–5 Final proof.

(a) *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

(b) *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) *Publication of final-proof notice.* The manager will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L.D. 131; 43 L.D. 216). The claimant must pay the cost of the publication but it is the duty of managers to procure the publication of proper final-proof notices. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by someone authorized to act for him.

(d) *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 1821.3–2 of this chapter.

(e) *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

(f) *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas

in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L.D. 269.)

(g) *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L.D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

(h) *Showing as to water right.* (1) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(2) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L.D. 305.)

(3) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(4) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

(i) *Showing where water supply is derived from irrigation project.* (1) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer either with his final proof or subsequently such evidence as he can tending to support his contentions.

(2) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the area administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the manager will reject the proof, subject to the usual right of appeal.

(j) *Final-proof expiration notice.* (1) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the claimant will be allowed 90 days in which to submit final proof. (44 L.D. 364.)

(2) Should no action be taken within the time allowed, the entry will be canceled. The 90 days provided for in this

section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

(k) *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L.D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township.

§ 2226.1–6 Amendments.

(a) *To enlarge area of desert-land entry.* Amendment for the purpose of enlarging the area of a desert-land entry will be granted under and in the conditions and circumstances now to be stated.

(1) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

(2) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(3) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

(b) *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented pursuant to § 1821.6–5(a) of this chapter will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6–1 to 1821.6–7 of this chapter and on the prescribed form, in so far as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

(c) *Evidence of water-right to accompany application to amend desert-land entry.* Application to amend desert-land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by § 2226.1–1 (d) and (e).

§ 2226.1–7 Contests.

(a) Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases.

CROSS REFERENCE: For provisions under Appeals and Hearings see Parts 1840 and 1850 of this chapter.

§ 2226.1–8 Relinquishments.

A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

CROSS REFERENCE: For relinquishments, in general, see Subpart 1825 of this chapter.

§ 2226.2 Extensions of time to make final proof.

§ 2226.2–1 General acts authorizing extensions of time.

(a) There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U.S.C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U.S.C. 333); April 30, 1912 (37 Stat. 106; 43 U.S.C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U.S.C. 335); and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts.

(b) In addition to the acts cited in this section, extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

§ 2226.2–2 Procedure on applications for extensions of time, where contest is pending.

(a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L.D. 603.)

(b) Consideration of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

§ 2226.2–3 Act of March 28, 1908.

Under the provisions of the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), the period of 4 years may be extended, in the discretion of the authorized officer, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. Applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L.D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

§ 2226.2–4 Act of April 30, 1912.

(a) Under the provisions of the act of April 30, 1912 (37 Stat. 106; 43 U.S.C. 334), a further extension of time may be granted for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension cannot be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

(b) An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts.

§ 2226.2–5 Act of February 25, 1925.

Applications for further extension of time under the act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335), as amended.

§ 2226.2–6 Service fees.

All applications for extension of time made under the acts of March 28, 1908, April 30, 1912, or February 25, 1925, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2226.2–7 Act of March 4, 1915.

(a) *General statement.* The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the act of March 21, 1918 (40 Stat. 458; 43 U.S.C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof, or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms.

(b) *Applications for relief.* (1) All applications for the benefits of section 5 of the act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered lands are situated. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

(2) All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

(3) All such applications for relief must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Conditions for extensions of time.* (1) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, the following conditions must exist: (i) The entry must be a lawful, pending entry made prior to March 4, 1915; (ii) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (iii) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law, (iv) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (v) there must be established, some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(2) The existence of the conditions set forth in subparagraph (1) (i) and (ii) of this paragraph, can be determined by examination of the records of the Bureau of Land Management, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land but not used as the basis of annual proof.

(3) The existence of the conditions enumerated in subparagraphs (1) (iii), (iv) and (v) of this paragraph must be established in all cases by the statements filed in support of the application for relief.

(4) With regard to the conditions set forth in subparagraph (1) (i) of this paragraph, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

(5) If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made, and favorable action on such report has been taken, the existence of the condition in subparagraph (1) (iii) of this paragraph will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

(6) If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

(7) The condition set forth in subparagraph (1) (iv) of this paragraph will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

(8) The extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4, 1915, as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17,

1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448).

(9) No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law.

(d) *Relief by homestead proof, or purchase.* The last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338) are designed to afford relief in cases of the kind last mentioned in the preceding section. The State Director is authorized, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

(e) *Conditions authorizing homestead proof and purchase.* (1) To entitle a claimant to relief under either of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, it must be made to appear to the satisfaction of the authorized officer: (i) That the entry in question is a lawful pending entry, made prior to March 4, 1915; (ii) where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (iii) that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and (iv) that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted, the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof.

(2) The conditions of subparagraph (1) (i) and (ii) of this paragraph can be determined from the records of the Bureau of Land Management.

(3) With regard to the condition of subparagraph (1) (iii) of this paragraph, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

(4) With regard to the condition of subparagraph (1) (iv) of this paragraph, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

(f) *Notice of allowance of relief; election to purchase.* When any application for relief under the second of the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the district land office an election to perfect the entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

(g) *Procedure for final proofs in relief cases.* In the submission and consideration of final proofs under the last two paragraphs of section 5 of the act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

(h) *Entries perfected by a compliance with homestead law.* (1) A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

(2) However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

(3) Failure to submit final proof within the 5-year period allowed by the law will be grounds for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Director, Bureau of Land Management, for confirmation.

(4) Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries.

(i) *No assignment allowed after relief has been granted.* After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, by the act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases.

(j) *Residence and improvements for homestead proof.* (1) If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

(2) Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), or the "3-year homestead law."

(3) If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

(4) Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

(5) The claimant must have a habitable house upon the land at the time of

submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

CROSS REFERENCE: For residence and cultivation requirements under the homestead laws, see §§ 2211.2(a) to 2211.2–3(c)(3).

(k) *Cultivation for homestead proof.* Cultivation of the land for at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed.

(l) *Homestead proof on entries in Utah and Idaho.* If the entry is situated in the State of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth section of the act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), as amended, or June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years.

(m) *Heirs and devisees; reduction of cultivation.* (1) If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the said act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

(2) The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

(3) With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

(n) *Fees.* The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

(o) *Entries perfected by purchase.* If claimant elects to perfect his entry under the last paragraph of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the manager the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

(p) *Credit for improvements used as the basis for annual proof.* Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

(q) *Penalty for failure to make final proof and payment.* If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the act of March 4, 1915, as amended, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

(r) *Forms of proofs.* Final proofs under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided.

§ 2226.2–8 Act of February 14, 1934.

(a) *Applications for relief; initial payment required.* (1) The act of February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), entitled "An act to amend an act approved March 4, 1929 (45 Stat. 1548), entitled 'An act to supplement the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161), as amended, by the act of March 21, 1918 (40 Stat. 458),' " grants relief to desert-land entrymen, as set forth in this section and § 232.58.

(2) This act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

(3) Desert-land entries made prior to March 4, 1915, and pending February 14, 1934, are entitled to the relief granted by the act of March 4, 1915, as amended, or by the provisions of this act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this act.

(4) In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the act of March 4, 1915, or under the provisions of said act of February 14, 1934.

(5) The showing as to the right to such relief must be the same as that required by § 2226.2–7(b). Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated.

(6) When any application for relief under the provisions of this act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed 1 year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

(7) Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice.

(b) *Publication and proof; final payment required.* (1) To perfect title to the entry, under the act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

(2) Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said act, with the proviso "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

(3) Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may if they so desire, take advantage of the provisions of this act.

(4) Where relief has been granted in desert-land entries under the original act of 1929 and prior to February 14, 1934, date of passage of act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original act of 1929 have not been completed prior to the date of said amendatory act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2.

§ 2226.3 Payments.

§ 2226.3–1 Collection of purchase money and fees; issuance of final certificate.

(a) At the time of making final proof the claimant must pay to the manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915, as amended and supplemented. (See § 2226.2–7 (o) and (r).)

(b) If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the land office the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land.

§ 2226.3–2 Amounts to be paid.

No fees or commissions are required of persons making entry under the desert-land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335, 337, 338), or February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making the final proof. Where final proofs are made before the manager in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

§ 2226.4 Desert-land entries within a reclamation project.

§ 2226.4–1 Conditions excusing entrymen from compliance with the desert-land laws.

(a) *Section 5; act of June 27, 1906.* By section 5 of the act of June 27, 1906 (34 Stat. 520, 43 U.S.C. 448), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.) will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

(b) *Persons excused from compliance with the desert-land laws.* Section 5 of the act of June 27, 1906, applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project, or by any withdrawal of public lands under the reclamation law, from improving or reclaiming the lands covered by their entries.

(c) *Statement required to warrant excuse.* No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the land office for the district in which his lands are situated a statement showing in detail all of the facts upon which he claims the right to be excused. This statement must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

(Sec. 10, 32 Stat. 390; as amended; 43 U.S.C. 373)

§ 2226.4–2 Annual proof.

(a) *Extension of time.* Inasmuch as entrymen are allowed 1 year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of the act of June 27, 1906, are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his statement explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

(b) *When application for extension of time should be filed.* An entryman will not need to invoke the privileges of the act of June 27, 1906, in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirect-

ly, to the withdrawal of the land on account of a reclamation project, the statement explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–3 Time extended to make final proof.

When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, he will be excused and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–4 Beginning of period for compliance with the law.

If, after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman shall begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must, if he depends on the Government's project for his water supply, comply with all provisions of the reclamation law, and must under the act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), relinquish or assign in not less than 2 years after notice all the land embraced in his entry in excess of one farm unit, and upon making final proof and complying with the regulations of the Department applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in the reclamation law, he shall be entitled to patent as to such retained farm unit, and final water-right certificate containing lien as provided for by the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541–546), act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), and the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), or to patent without a lien if provision therefor shall have been made as provided for by the act of May 15, 1922 (42 Stat. 541; 43 U.S.C. 511–513).

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–5 Assignment of desert-land entries in whole or in part.

(a) *Act of July 24, 1912.* Under the act of July 24, 1912 (37 Stat. 200; 43 U.S.C. 449), desert-land entries covering lands within the exterior limits of a Government reclamation project may be assigned in whole or in part, even though water-right application has been filed for the land in connection with the Government reclamation project, or application for an extension of time in which to submit proof on the entry has been submitted, under the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), as amended by the act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), requiring reduction of the area of the entry to one farm unit.

(b) *Amendment of farm-unit plat after partial assignment.* Where it is desired to assign part of a desert-land entry which has been designated as a farm unit, application for the amendment of the farm-unit plat should be filed with the official in charge of the project, as in the case of assignments of homestead entries. (See § 2211.7–4(a) (3) to (5).) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–6 Desert-land entryman may proceed independently of Government irrigation.

Special attention is called to the fact that nothing contained in the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation law, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–7 Disposal of lands in excess of 160 acres.

Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish or assign all of the lands embraced in their entries in excess of one farm unit in not less than 2 years after notice through the land office, must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project, and also comply with the regulations of the Department applicable to the remainder of the irrigable land of the project.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–8 Cancellation of entries for nonpayment of water-right charges.

All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forfeiture, whether water-right application has been made or not.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

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Subpart 2231—Cemeteries

AUTHORITY: The provisions of this Subpart 2231 issued under R.S. 2478; 43 U.S.C. 1201. Interpret or apply 34 Stat. 1052; U.S.C. 682.

§ 2231.0–3 Authority.

The act of March 1, 1907 (34 Stat. 1052; 43 U.S.C. 682), authorizes the Secretary of the Interior to sell and convey lands for cemetery purposes to religious or fraternal associations or private corporations, empowered by the laws under which they are organized or incorporated to hold lands for such purposes.

§ 2231.1 General limitations and conditions.

(a) No association or corporation can secure title to more than 80 acres of public lands under the act.

(b) Only unreserved and unappropriated nonmineral public lands are available for selection. Applicants will not be granted title to public lands subject to section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, unless and until the lands are classified as suitable for cemetery purposes and not needed for any other public purpose or higher use.

(c) Patents will issue only for surveyed land and only in the name of the association or corporation.

(d) All patents will contain a clause providing that if the land or any part of it should be sold or cease to be used for cemetery purposes, title shall revert to the United States.

§ 2231.2 Applications.

(a) Applicants under the act must submit, in duplicate, an application to the appropriate office of the Bureau of Land Management. No specific form is required but the application must show (1) the name and address of the association or corporation, (2) legal description of the lands desired or if unsurveyed, sufficient information to identify the location, boundaries, and the area of the tract which must be as nearly rectangular as possible, (3) the authority that empowered the association or corporation to hold lands for cemetery purposes in the State or Territory in which the land is located, (4) the official character and express authority of the officer or officers applying on behalf of the association or corporation, and (5) that the lands are not adversely occupied or used.

(b) Each application must be accompanied by a filing fee of $10.

§ 2231.3 Purchase price, publication, and protests.

(a) Purchase price will be fixed by appraisal of the fair market value of the lands but at not less than $1.25 per acre and must be paid before patent will issue.

(b) Applicants will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(c) Applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

Subpart 2232—Recreation and Public Purposes Act

AUTHORITY: The provisions of this Subpart 2232 issued under 44 Stat. 741, 68 Stat. 173; 43 U.S.C. 869.

§ 2232.0–1 Purpose.

(a) Qualified applicants are permitted by the act to acquire available lands for use for any public purposes for which they are authorized by their creating authority to hold lands. Nonprofit associations and nonprofit corporations are permitted, in addition, to acquire lands for use for any recreational purpose consistent with their creating authority.

(b) No applicant can secure lands under the act, however, for any use authorized under any other public land law. This restriction does not apply to the use of lands for residence, business, recreation, and community-site purposes authorized by the act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a, Subpart 2233) as amended.

§ 2232.0–3 Authority.

The act of June 14, 1926 (44 Stat. 741), as amended June 4, 1954 (68 Stat. 173), June 23 and September 21, 1959 (73 Stat. 110, 571), and September 13, 1960 (74 Stat. 899; 43 U.S.C. 869; 869:1–4), authorizes the Secretary of the Interior, under specified conditions, to lease or sell lands for recreational and public purposes. This legislation is referred to as "the act" in the regulations of this part.

§ 2232.0–6 Qualified applicants.

The following are qualified to make applications under the act; States, Federal and State instrumentalities and political subdivisions, including counties and municipalities; and nonprofit associations and nonprofit corporations.

§ 2232.0–7 Lands subject to disposition.

The act is applicable to any public domain lands except (a) lands withdrawn or reserved for national forests, nation parks and monuments, and national wildlife refuges and (b) Indian lands and lands set aside or held for use by or the benefit of Indians. The act is applicable to the Oregon and California Railroad revested grant lands and to the Coos Bay reconveyed wagon-road grant lands only insofar as it applies to leases of land to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

§ 2232.1 Procedures.

§ 2232.1–1 Applications for lands.

(a) Applicants under the act must submit an application accompanied by a petition properly executed on forms approved by the Director. If the lands have been already classified for disposition under the act, no petition is required. Each application must be accompanied by (1) three copies of a statement describing the proposed use of the lands, showing that the application involves an established or definitely proposed project, and giving as much detail concerning the plan of development and improvement of the project as is necessary to describe the project and its purpose adequately and the proposed disposition of any revenues to be realized from it and (2) a filing fee of $10. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) The acreage applied for in any one application for patent cannot exceed 640 acres except that applications for patent for State park purposes may embrace as much as 6,400 acres, or where provided by law 12,800 acres.

§ 2232.1–2 Applications for transfer, change of use, and for renewal of leases.

(a) (1) Applications under the act for permission to add to, or to change the use specified in a lease or patent, applications to transfer title or lease to a third party, and applications for renewal of a lease must be filed in triplicate with the appropriate office of the Bureau of Land Management. No form is specified but the matter should be fully explained by the applicant.

(2) Applications for permission to add to or to change use must be accompanied by three copies of the showing required by § 2232.1–1.

(3) Applications for approval of transfers of title or lease must be accompanied by three copies of a form approved by the Director and executed by the proposed transferee in accordance with § 2232.1–1.

(4) Applications for renewal of leases must be accompanied by three copies of a statement showing, in detail sufficient to describe the situation adequately, the past use of the lands and the proposed use after renewal of the lease.

(5) Each application must be accompanied by a filing fee of $10.

(6) Prior to approval of an application filed under paragraph (b) of this section the land may be reappraised in accordance with § 2232.2–3 and the beneficiary required to make such payments as are found justified by such reappraisal.

(b) (1) Applications under section 4 of the act for permission to transfer title or to change the use in respect to land covered by any patent issued prior to June 4, 1954, must be submitted in conformance with this section.

(2) The land, however, will not be subject to reappraisal and the beneficiary will not be required to make any payment other than the filing fee.

§ 2232.1–3 Publications; protests.

(a) Applicants for patents under the act will be required upon demand to publish once a week for four consecutive weeks in accordance with § 1824.4 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent under the applications. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) Such applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2232.1–4 Classifications.

(a) Lands in Alaska classified under the act and lands in the States classified pursuant to the act under section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

(b) Classifications made pursuant to the act on the motion of the Government for which no application is filed within 18 months after issuance will be vacated and the land restored to its former status.

§ 2232.2 Dispositions.

§ 2232.2–1 General limitations and conditions.

(a) Applicants will not be granted title to or use of land under the act unless and until (1) the land is first classified as suitable for the purpose sought and not needed for any other public purpose or is not more valuable and suitable for some other use, including the development of power; and, (2) if the land is under the jurisdiction of any agency or instrumentality outside the Department of the Interior, that agency or instrumentality consents to the proposed disposition.

(b) Applicants will not be granted title to or use of land under the act except for an established or definitely proposed project. A definitely proposed project is a project which has been authorized by competent authority irrespective of whether or not it has been financed and otherwise fully implemented, providing that there exists the probability that it will be fully implemented within a reasonable time.

(c) No applicant in any one calendar year can receive under the act patents for land except in conformance with the following:

(1) Any State may acquire in its own name, or in the name of its State park agency, or in the name of any other agency having jurisdiction over the State park system of said State designated by the Governor of the State as its sole representative for acceptance of lands under this provision for recreational purposes, not more than 6,400 acres involving not more than three sites, except that should any State fail in any one calendar year to receive the maximum herein specified, other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State pursuant to any application on file with the Secretary of the Interior on the last day of said year, to the extent that the conveyances would not have exceeded the limitations of said year. In addition, any State may acquire, in its own name or in the name of an agency or instrumentality of such State not more than 640 acres for each of its programs involving public purposes other than recreation.

(2) Any political subdivision of a State and any nonprofit corporation or nonprofit association may acquire in its

own name for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(d) No patent will be issued under the act unless and until the land is officially surveyed.

(e) All leases and patents issued under the act will reserve to the United States all minerals, together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

(f) Municipal corporations cannot secure land under this act if it is not within convenient access to the municipality and within the same State as the municipality. Other qualified applicants cannot secure land outside of their political boundaries or other area of jurisdiction.

(g) No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to the National System of Interstate and Defense Highways (23 U.S.C.) will be issued under the regulations of this part, except in conformity with, and subject to, the national standards prepared and promulgated by the Secretary of Commerce. No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to any other highway will be issued under the regulations of this part if the proposed display would not conform with the standards or policies established by the appropriate State or local governmental entities which have authority to establish such standards or policies. Where the authorized officer finds that established standards or policies are insufficient in connection with any application under the regulations of this part adequately to promote the safety, convenience, and enjoyment of public travel, to protect the public investment in the highway or in the adjacent public lands, to preserve for the public significant scenic or other recreational values in the public lands, or otherwise to protect the public interest, he shall establish such additional standards as he may deem appropriate in the circumstances, giving due consideration to the need for directional and other official signs, the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof, and the interest of the traveling public in, and its need for, specific types of information.

§ 2232.2–2 Lease provisions.

(a) The term of leases under the act will be fixed by the authorized official but will not exceed 20 years. Leases will be renewable at the discretion of such official.

(b) Leases will be issued on a form approved by the Director and will contain the usual terms and conditions required by law, public policy, and, insofar as possible, by Department of the Interior procedure.

(c) Leases will contain such terms and conditions which the signing officer or the administering agency considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interests.

(d) Leases will be terminable by the authorized official upon failure of the lessee to comply with the terms of the lease, upon a finding that all or part of the land is being devoted to other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized official but not more than 5 years or less than 2 years.

(e) Leases will not be transferable except with the consent of the proper official. Transferees must meet all the qualifications of applicants under the act and will be subject to all the terms and conditions of the regulations in this part.

§ 2232.2–3 Price.

(a) Conveyances under the act for historic monument purposes will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations for other than historic monument purposes will be made at prices fixed through appraisal of the fair market value of the land, taking into consideration the purposes for which the lands will be used.

(c) All other sales will be made at prices fixed through (1) appraisal of the fair market value of the lands or otherwise, taking into consideration the purpose for which the land will be used or (2) any method which considers the purpose for which the land will be used.

(d) Annual rentals under leases will be fair and reasonable and will be based on the value of the lands as determined by the requirements of paragraphs (b) and (c) of this section.

(e) A patent applicant, when the land has been appraised, will be required to pay the full purchase price before the patent will be issued. The rental under a lease shall be payable in advance. Upon appraisal of the land, a lease applicant will be required to pay at least the first year's rental before the lease will be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term will be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

§ 2232.2–4 Patent provisions.

All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without consent of competent authority or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations of this part.

§ 2232.2–5 Minerals; timber.

(a) Any minerals subject to the leasing laws reserved to the United States in the lands patented or leases under the terms of the act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals are not subject to disposition or to prospecting except by an authorized Federal agency.

(b) A lessee under the act will not be permitted to cut timber from the leased lands without prior permission from the appropriate officer.

Subpart 2233—Small Tract

AUTHORITY: The provisions of this Subpart 2233 issued under sec. 1, 52 Stat. 609, as amended; 43 U.S.C. 682a. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 2233.0–2 Objectives.

(a) It is the program in the administration of the act of June 1, 1938, as amended, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end small tract activity shall be coordinated with interested local governmental agencies, and small tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved and in the light of availability of schools, utilities, and other facilities. Lands will not be leased or sold, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon State or local governments for roads; schools; police, health, and fire protection; and other facilities. Undesirable types of construction for settlement or business along public highways and parkways will be guarded against, and lands will not the use of water for grazing purposes or unduly impair the protection of watershed areas or the stability of existing economic enterprises.

(b) Under this act lands may be classified for direct sale, for lease and sale, or for lease only. Revested Oregon and California Railroad lands and reconveyed Coos Bay Wagon Road grant lands in Oregon will be classified for lease only—as will other public lands where title should remain in the United States and leasing is not contrary to the interests of the United States. Lands suitable for community site purposes will be classified for lease, lease and sale, or direct sale at appraised prices and will be subject to application only by nonprofit corporations or associations, States, municipalities, or other governmental subdivisions. Lands may be classified for lease and sale, as provided

for in § 2233.3–3 where such action is necessary for the protection of adjacent property and the community as a whole. In other cases, lands will be sold at public auction at not less than their appraised fair market value in accordance with § 2233.4.

§ 2233.0–3 Authority.

(a) The act of June 1, 1938 (52 Stat. 609), as amended by the act of June 8, 1954 (68 Stat. 239; 43 U.S.C. 682a) authorizes the Secretary of the Interior, in his discretion, to sell or lease a tract, not exceeding five acres, of any vacant, unreserved public lands, including such lands in Alaska, public lands withdrawn by Executive Orders Numbered 6910 of November 26, 1934, and 6964 of February 5, 1935, or public lands withdrawn or reserved by the Secretary of the Interior for any purposes, which the Secretary may classify as chiefly valuable for residence, recreation, business, or community sites. The act is applicable to lands in such areas as grazing districts and lands withdrawn for reclamation or stock driveway purposes. The act does not apply to lands withdrawn by the Secretary solely under delegated authority (e.g., under Executive Order 10355 of May 26, 1952) or to reservations such as national forests, national parks, or national mounments. Authority to lease lands under the act for residence, recreation and community site purposes extends to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grants lands in Oregon under the jurisdiction of the Department of the Interior provided that such leases will not interfere with sustained yield timber management on these lands. The lands may not be leased or sold until classified for small tract purposes; and may not be occupied until the lands are leased or sold.

§ 2233.0–6 Applicants.

(a) *Qualifications; restrictions.* (1) An application may be made by any of the following:

(i) An individual who is a citizen of the United States or who has filed declaration of intention to become a citizen.

(ii) A partnership or an association, each of the members of which is a citizen of the United States or has filed declaration of intention to become a citizen.

(iii) A corporation, including nonprofit corporations organized under the laws of the United States or of any State or Territory thereof and authorized to do business in the State or Territory in which the land is located.

(iv) A State, Territory, Municipality or other governmental subdivision.

(2) Any employee of the Department of the Interior, stationed in Alaska may purchase or lease one tract in Alaska for residence or recreation purposes. The conveyance of the tract will provide for reversion to the United States if the land is used for purposes other than residence or recreation within twenty-five years.

(3) Generally no person will be permitted to obtain by lease or purchase more than one tract under the act. Where more than one tract is needed, however, each tract must be the subject of a separate application, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one application is warranted by the circumstances. In each application the applicant must identify all other applications under the act, if any, filed by him or any member of his family residing with him.

(b) *Preference rights.* Where public land is classified pursuant to a validly filed application on a form approved by the Director, accepted for unclassified lands open to application under the regulations of this part (see subparagraph (4) of pargraph (e) of § 2233.1–1 the applicant is entitled to a preference right of lease or purchase, as the case may be, if (1) the land is thereafter classified for the type of site applied for; (2) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; and (3) where the land is classified for direct sale, the applicant tenders the fair market value of the land when required.

§ 2233.1 Procedures.

§ 2233.1–1 Application; general procedure.

(a) Any person who desires to lease or purchase unclassified lands that have been opened to application pursuant to the regulations of this part (see subparagraph (4) of paragraph (e) of this section) must file an application, in duplicate, together with a petition, properly executed, on forms approved by the Director. If the lands have been already classified and opened to application, only an application is required. If the lands have been already classified for direct sale at public auction no application or petition should be filed (see paragraph (c) of this section). The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) If the land has not been classified the applicant should describe the desired tract, not to exceed five acres, by aliquot parts of a legal subdivision if surveyed and if unsurveyed by metes and bounds sufficient to permit ready and accurate identification. Where the land has been classified the applicant should describe the selected land in accordance with the classification order or official plat of survey. The applicant may also indicate that if the selected tract is not available he is willing to accept any other available tract described in the classification order which may be allocated to him.

(c) Any person desiring to purchase a tract already classified for sale at public auction under the act may submit a bid in accordance with the provisions of the classification order and § 2233.4. No application should be filed in the above circumstances.

(d) No application for small tracts will be accepted under the regulations in this part unless the aplicant certifies that he has personally inspected the small tract described in his application or lands within one mile of that tract.

(e) An application will not be accepted, will not be considered as filed, and will be returned to the applicant if:

(1) The land description in the application does not conform with the classification order or official plat of survey, or if the lands are unclassified and unsurveyed, the metes and bounds description is inadequate to permit ready and accurate identification of the tract (see paragraph (b) of this section).

(2) The application is not accompanied by the filing fee of $10 and the advance rental required by § 2233.1–4 (a) and (b) namely, the advance rental specified in the classification order or if the lands are not classified, $100 for business sites and $25 for other sites.

(1) The application is not signed by the applicant, or

(2) The lands applied for are not open to application pursuant to a notice published in the FEDERAL REGISTER.

§ 2233.1–2 Application following lease terminations, unsuccessful public auctions.

(a) In any of the following circumstances, a tract shall not be subject to further application until an order is issued specifying the time and manner in which the tract shall be made available for lease or purchase: (1) When a small tract lease has terminated, been relinquished or canceled for any reason; (2) where no one has been declared purchaser for a tract offered at public auction.

(b) The order will be posted in the land office at least 15 days prior to its effective date and will be given wide publicity through appropriate news media in the area.

(c) The order will specify which one of the following methods will be used for disposing of the land: (1) Sale at public auction to the highest bidder in accordance with § 2233.4; (2) a special drawing procedure indicated in paragraph (d) of this section.

(d) Any order calling for a special drawing procedure will specify (1) the time and place for filing drawing cards, and (2) that Special Drawing Card on a form approved by the Director must be properly executed. The drawing will determine priority and establish an adequate list of eligibles. Drawings may be held for several tracts, and at whatever intervals of time the authorized official feels warranted by the circumstances.

(R.S. 2478, 58 Stat. 748, as amended; 43 U.S.C. 682a–692e, 282–284, 1201)

§ 2233.1–3 Drawing procedure.

(a) Whenever filings in excess of the number of tracts available are anticipated for lands classified for lease and sale or for lease, or when the conditions of § 2233.1–2(c) apply, a drawing or drawings will be held. The classification or other order will give all relevant information concerning the drawing.

(b) The classification or other order may require the filing of Special Drawing Cards on a form approved by the Director in lieu of an application. Any

person who has the necessary qualifications may obtain an official drawing entry card upon request to the land office manager. The request should designate the classification order by number. It should be accompanied by a stamped, self-addressed return envelope. Each successful entrant in a drawing will be furnished in duplicate, an application on a form approved by the Director, bearing the description of the tract allocated to him. The forms must be completely filled out, signed and returned, accompanied by the proper rental and fees within the time allowed by the authorized officer of the Bureau of Land Management. Where an entrant for any reason fails to comply with the requirements within the time allowed, the tract will become available to the alternate next in line in the drawing.

(c) The classification or other order may require the filing of a stamped, self-addressed return envelope and a sealed envelope containing properly executed copies of application together with the required filing fees and advance payments (see § 2233.1–4 (a) and (b)).

(d) To qualify for a tract, the entrant must qualify under the regulations of this part and must comply with all instruction in the order and on the entry card, when entry cards are required. If any entrant files more than one entry card or applies for more than one tract in any drawing, the entrant shall be ineligible to participate in the drawing.

§ 2233.1–4 Fees and payments.

(a) *Filing fee.* Every application must be accompanied by a filing fee of $10. No fee is required for the filing of a "Special Drawing Entry Card," but the fee is required of entrants who are successful in the drawing. No fee is required in connection with a bid in a sale at public auction. A fee of $10 is required with each application to purchase, based upon an outstanding lease and with each application for renewal or assignment of an outstanding lease. All filing fees will be retained by the Government.

(b) *Advance payment.* In addition to filing fees, every application except applications for community sites, and every bid for lands subject to sale at public auction, must be accompanied by an advance payment, which will be applied against the rental or purchase price of the land:

(1) If the land has been classified for lease or for lease and sale, the advance payment is the rental for the entire lease period, as specified in the classification order if such period does not exceed five years. Where lands are classified for lease for periods in excess of five years, the advance payment will be as specified in the classification order. If the land has not been classified, the advance payment is $25 for nonbusiness and $100 for business site applications. Successful applicants will be required to pay any difference between advance payment and rental or purchase price before their applications will be granted.

(2) If the land has been classified for sale at public auction, the advance payment is whatever amount the applicant bids, but not less than the appraised price stated in the classification order.

(3) Advance payments will be refunded to unsuccessful applicants or bidders.

§ 2233.2 Classification.

(a) No lease will be issued or sale authorized prior to classification of land for such purpose. If the tract is found not suitable for such purpose, the application will be rejected.

(b) Lands classified under the act of June 1, 1938, as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

§ 2233.3 Leases.

§ 2233.3–1 Provisions; terms and rentals.

(a) The term of lease will be specified in the classification order and will not exceed three years for lands classified for lease and sale and will not exceed twenty years for lands classified for lease only.

(b) The amount of rental will be specified in the appropriate order. The rental for community sites will take into consideration the purpose for which the land will be used. Rental for other types of sites will equal the fair market rental of the lands, provided, however, the minimum rental will be $100 per year for business sites and $25 per year for other sites.

(c) Leases issued for periods in excess of five years will provide for the construction of improvements, satisfactory for the purpose for which the lease issued, during the first five years of the lease period. Failure to comply with this requirement will result in cancellation of the lease except where the lessee can demonstrate that such failure was due to unavoidable and unforeseen circumstances.

(d) Provisions relating to the improvement and occupancy of leased tracts are contained in the application form. Special provisions implementing the general provisions on the form may be indicated in the order of classification.

§ 2233.3–2 Assignment; subleasing.

(a) No assignment of a lease will be recognized unless and until approved by the Bureau of Land Management. Approval of assignments will be discretionary but in no case will an assignment be approved until suitable improvements are constructed on the land, except where the lessee can demonstrate that his failure to construct such improvements was caused by unforeseen and unavoidable circumstances.

(b) Proposed assignments of leases must be submitted within 90 days from the date of execution in duplicate on a form approved by the Director to the appropriate office mentioned in § 2233.1–1 and must be accompanied by the filing fee as required in § 2233.1–4(a).

(c) Subleasing of a tract, in whole or in part, will not be approved.

§ 2233.3–3 With option to purchase; sale; patent.

(a) Leases for lands classified for lease and sale will contain an option to purchase clause. The option to purchase clause will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at any time within the term of the lease, provided the improvements required by the lease have been made and all other terms and conditions of the lease complied with. The net purchase price of the land will be the appraised fair market value of the unimproved land as of the date of the lease minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of an allowable application to purchase.

(b) An application to purchase must be filed with the office mentioned in § 2233.1–1(a) on a form approved by the Director in duplicate, together with (1) a statement as to the cost, type and character of the improvements constructed on the land, (2) one or more photographs showing clearly such improvements, and (3) the filing fee as required in § 2233.1–4(a).

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the net purchase price.

§ 2233.3–4 Renewal.

(a) An application for renewal of a lease must be filed on a form approved by the Director in duplicate with the office mentioned in § 2233.1–1(a) prior to the expiration of the lease. A renewal in the form of a new lease will be granted only if it is determined that a new lease should issue and that the requirements of paragraph (b) or (c) of this section have been met. The term of the lease and any special conditions will be established by the officer who signs it. The application must be accompanied by a filing fee in compliance with § 2233.1–4(a).

(b) Where the land has been classified for lease only, renewals will be approved only if the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which the lease originally issued, such as a substantial and presentable dwelling suitable for year-round or seasonal use where the land was classified for residence purposes.

(c) Where the land has been classified for lease and sale, renewals will be approved only upon a satisfactory showing the the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee.

§ 2233.3–5 Termination or cancellation; removal of improvements.

(a) The lessee may terminate the lease, if he is not in default thereunder, by filing a notice of relinquishment of the lease in the proper land office. Any lease may be canceled where the lessee has failed to comply with any of the terms, covenants, and stipulations of the lease, or to abide by any of the regulations in this part, and such default has continued for 30 days after written notice thereof.

(b) No refund will be made of rental for the unexpired term of a lease relinquished by the lessee or canceled for cause.

(c) Upon the termination, cancellation, or expiration of a lease, the lessee will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof. If the improvements are disposed of to a person other than a subsequent lessee they must be removed from the land within the 90-day period, otherwise the improvements will become the property of the United States.

§ 2233.4 Public auctions.

(a) Whenever lands are classified for direct sale by public auction, they will be sold at not less than their appraised fair market value at the time and place and in the manner specified by the classification order.

(b) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(c) A bid sent by mail must be received at the place and within the time specified in the classification order. Each such bid must clearly state (1) the name and address of the bidder and (2) the specific tract, as described in the classification order, for which the bid is made. The envelope must be noted as required by the classification order.

(d) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid. Bids by mail for more than one tract offered at a sale must be enclosed in separate envelopes but payment need accompany only the highest bid provided all other bids designate the envelope containing the payment.

(e) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared high bidder. If the high bidder meets the general requirements of a small tract applicant, he will be declared purchaser. Any person who is declared high bidder will automatically be disqualified from consideration for other tracts for which he may have submitted bids.

(f) If there are no successful purchasers of any tracts offered at the sale, the tracts will be closed to filing of applications until an order is issued specifying the time and manner in which they shall be made available in accordance with § 2233.1–2.

§ 2233.5 Acreage limitation; rights-of-way.

(a) No tract shall be larger than five acres except where subdivision of a fractional lot to meet this limitation would leave areas unsuitable for practical use. In such cases, the lots will be subdivided to produce usable units not in excess of 7½ acres.

(b) The classification order may provide for rights-of-way over each tract for street and road purposes and for public utilities. If the classification order does not so provide, the right-of-way will be 50 feet along the boundaries of the tract.

§ 2233.6 Minerals; timber.

(a) Any lease or patent issued under the act will reserve to the United States all deposits of coal, oil, gas, or other minerals, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe. Any minerals subject to the leasing laws in the lands patented or leased under the terms of the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal. Until rules and regulations have been issued, the other kinds of minerals that may be found in such lands are not subject to prospecting or disposition.

(b) (1) Because of the need for strategic and fissionable source minerals as well as minerals important to the economic and industrial welfare of the Nation and its security, the Director may authorize any Federal agency to enter upon any of the lands classified for small tract purposes within the State of Florida (and such other States or Territory for which approval of this action may be given by the Secretary of the Interior) for exploratory purposes to determine whether such lands are mineral in character and the nature, extent, and incidence of such mineral, if any, even though such lands are under lease or have been patented in accordance with paragraph (a) of this section.

(2) The exploratory work conducted under the authority hereof, shall not be construed as permitting damage to the permanent structures or buildings of the small tract lessees or patentees or their lawful successors in interest.

(c) A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the appropriate office mentioned in § 2233.1–1.

§ 2233.7 Community sites; appraisal; restrictions.

(a) Land suitable for community site purposes may be classified for direct sale, for lease and sale or for lease only in conformance with the provisions of § 2233.0–2. Appraisals for sale or rental value may take into consideration the use which is to be made of the land where the public use contemplated justifies such action.

(b) Where lands are sold at less than fair market value in accordance with paragraph (a) of this section, the patent will contain a provision for reversion of title to the United States if the lands are used for any purpose not consistent with the classification order after issuance of patent unless consent to change the use is first obtained from the authorized officer.

§ 2233.9 Alaska.

§ 2233.9–1 Purchase of tracts not exceeding 5 acres, on showing as to employment or business (Act of March 3, 1927).

(a) *Authority.* The act of March 3, 1927 (44 Stat. 1364; 48 U.S.C. 461), as amended, authorizes the sale as a homestead or headquarters of not to exceed five acres of unreserved public lands in Alaska at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, association of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska. The lands must be nonmineral in character except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), as amended.

(b) *Purpose of statute.* The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters.

(c) *Notice of initiation of claim.* A notice of the initiation of a claim under the act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of § 2233.9–2(b) to (e).

(d) *Use of lands.* Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

(e) *Form and contents of applications.* Applications under the act of March 3, 1927, must be filed in duplicate in the land office for the district in which the land is situated, and the claim must be in reasonably compact form.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) The age and citizenship of applicant.

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(3) The date when the land was first occupied as a homestead or headquarters.

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(6) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements

made by or in possession of another person, association, or corporation.

(7) That the land is not included within an area which is reserved because of springs thereon. All facts as to medicinal or other springs must be stated, in accordance with § 2321.1–2(c).

(8) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(9) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper description, it will be prepared at the time of approval of the application.

(10) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(11) All applications must be accompanied by an application service fee of $10 which will not be returnable.

CROSS REFERENCES: See the following parts in this subchapter: For soldiers' additional rights, § 2221.9; for Indian and Eskimo allotments, Subpart 2212; for mining claims, Subpart 3636; for school indemnity selections, § 2222.9; for shore space, Subpart 2024; for trade and manufacturing sites, Subpart 2213.

(f) *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

§ 2233.9–2 Purchase of tracts not exceeding 5 acres, without showing as to employment or business (Act of May 26, 1934).

(a) *Authority.* The act of May 26, 1934 (48 Stat. 809; 48 U.S.C. 461) amended section 10 of the act of May 14, 1898 (30 Stat. 413), as amended by the act of March 3, 1927 (44 Stat. 1364), so as to provide that any citizen, after occupying land of the character described in said section of a homestead or headquarters, in a habitable house not less than 5 months each year for 3 years, may purchase such tract, not exceeding 5 acres, in a reasonably compact form, without a showing as to his employment or business, upon the payment of $2.50 per acre, the minimum payment for any one tract to be $10.

(b) *Notice of initiation of claim.* Any qualified person initiating a claim on or after April 29, 1950, under the act of May 26, 1934, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, such person must file notice of the claim in the proper land office within 90 days from that date.

(c) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of settlement and occupancy and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(d) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (b) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

(e) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to the form of disposition specified in the notice.

(f) *Form and contents of application.* Applications under the act of May 26, 1934, must be filed in duplicate, if for surveyed land, and in triplicate, if for unsurveyed land, in the land office for the district within which the land is situated.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) Full name, post office address and age of applicant.

(2) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(3) A description of the habitable house on the land, the date when it was placed on the land, and the dates each year from which and to which the applicant has resided in such house.

(4) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

(5) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in § 2321.1–2(c). If there be any such springs upon or adjacent to the land, on account of which the land is reserved, the facts relative thereto must be set forth in full.

(6) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(7) That the applicant has not theretofore applied for land under said act, or if he has previously purchased a tract he should make a full showing as to the former purchase and the necessity for the second application.

(8) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot my be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

(9) All applications for unsurveyed land must be accompanied by a petition for survey, describing the land applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(10) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

§ 2233.9–3 Veterans preference.

(a) *Applications by veterans of World War II or of the Korean conflict.* (1) Upon the restoration or opening of surveyed public lands in Alaska with a preference right of application to veterans of World War II or of the Korean conflict, pursuant to section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U.S.C. 282), as amended, such veterans may file applications for home or headquarter sites on such lands under the act of May 26, 1934 (48 Stat. 809; 48 U.S.C. 461). Preference right applications filed by such veterans must describe the land desired in terms of the public land surveys and must give all of the information required by § 2233.9–2(f) except as to the erection of a habitable house on the land and compliance with the law in the matter of residence. No payment will be required until proof of compliance with the residence requirements has been made. Such an applicant will be required to establish residence upon the land in a habitable house within 6 months from the date of the notice of the allowance of his application. An extension of time to establish residence may be granted under the conditions under which it may be granted to a homestead entryman. During the first year after establishing residence the claimant will be required

to reside upon the land for a period of at least 5 months. He may claim credit on the period of residence required by the act of May 26, 1934, for military or naval service in like manner as is provided in the case of homestead entries.

(2) The preference right of application granted by the Act of September 27, 1944 terminated September 27, 1959.

(b) *Time for filing application.* Except as provided in § 2233.9–3(a) application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(c) *Publication and posting.* In the matter of publication and posting these applications will be governed by the instructions given in connection with applications for soldiers' additional homestead entries as set out in § 2221.9–4(e).

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

Subpart 2234—Rights-of-way

§ 2234.1 General regulations.

AUTHORITY: The provisions of this Subpart 2234 issued under R.S. 161, 2478; 5 U.S.C. 22, 43 U.S.C. 2, 1201. Additional authority is cited to text in parentheses.

REFERENCE: See Appendix B following § 2234.6–4.

§ 2234.1–1 Scope; definitions.

(a) *Scope.* (1) This section applies to all rights-of-way covered by §§ 2234.1–1 to 2234.1–6; 2234.2–3(a); 2234.2–4; 2234.3–1; 2234.3–2; 2234.4–1; 2234.4–2; 2234.5–1; 2234.5–2; 2234.6.

(2) This does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L.D. 513), with the consent of the agency having jurisdiction or control over the land.

(3) All general right-of-way laws, and the regulations thereunder contained in this subpart, are applicable to Alaska. (See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U.S.C. 23), and 30 Op. Atty. Gen. 387 (1915.)

(b) *Definitions.* As used in this Subpart:

(1) "Secretary" means the Secretary of the Interior.

(2) "Director" means the Director, Bureau of Land Management.

(3) "State Director" means State Director of the Bureau of Land Management, or his authorized representative.

(4) "Manager" means manager of the land office for the district in which the lands applied for are situated. For areas for which there is no land office "manager" means the Director.

(5) "Project" means the physical structures in connection with which the right-of-way is approved.

(6) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

(7) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.

(8) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.

(9) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

§ 2234.1–2 Procedures.

(a) *Application.* (1) No special form of application is required. The application should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in accordance with the provisions of § 1821.2 of this Chapter. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

(2) All applications filed pursuant to this part in the name of individuals, corporations or associations must be accompanied by an application service fee of $10 except where the right of way will authorize use and occupancy of the lands exclusively for the purposes stated in § 2234.1–6(c). The service fee will not be returnable. No application service fee will be required of States or agencies or instrumentalities thereof or of Government agencies.

(b) *Showing as to organizations required of corporations.* (1) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(2) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(3) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(4) A copy of the resolution or bylaws of the corporation authorizing the filing of the application must also be filed.

(5) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

(c) *Showing as to citizenship required of individuals; showing by associations of individuals.* (1) An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(2) An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

(d) *Documents which must accompany application.* (1) *Maps.* Each application, other than a reservoir declaratory statement under § 2234.3–2(b)(1) must be accompanied by a map prepared on tracing linen and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(i) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kv. map scales may at option of the applicant be 5,280 feet to the inch.

(ii) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(iii) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(iv) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(v) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(vi) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(vii) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix B) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(viii) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(2) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

(e) *Indian lands.* The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 161.

§ 2234.1–3 Nature of interest.

(a) *Nature of interest granted; settlement on right-of-way; rights of ingress and egress.* (1) No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

(2) All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

(3) In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

(b) *Commencement of construction work in advance of approval of right-of-way; trespass.* (1) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies and to use and occupy such lands in advance of the approval of a right-of-way may be granted by the manager upon a satisfactory showing of the necessity for such action and upon a determination, after the request for permission has been cleared by all interested agencies of the Department, that such action is compatible with the public interest. Requests for such advance authority need not meet the formal requirements of § 2234.1–2 (a) to (c) and may be filed with the agency having supervision of the land involved, in which case a duplicate request must be filed in the office specified in § 2234.1–2 (a).

(2) Any grant of advance permission is solely for the convenience of the applicant and is not a commitment by the Department that a right-of-way will be approved. The Department's authority in acting on a right-of-way application is not restricted in any way by the grant of advance permission or any requirements laid down in such grant of permission and the Department may impose additional or different requirements, within the scope of the applicable statute and lawful regulations thereunder, as conditions precedent to the approval of the right-of-way. A grant of advance permission is revocable at will, and the grantee assumes all the risk of operating under such permission.

(3) Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

(c) *Terms and conditions.* An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(2) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(3) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(4) To do everything reasonably within his power, both independently and on

request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(5) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(6) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(7) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(8) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(9) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(10) That he shall at all times keep the manager informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(11) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(12) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(13) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

(d) *Proposed or existing national forest.* Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

(e) *National parks and monuments.* (1) The act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(2) Whenever a right-of-way is desired through any national park or monument for purposes other than those excepted by the act of March 3, 1921, or not otherwise expressly prohibited by law, the applicant must show to the satisfaction of the Director, National Park Service, that the location and use of the right-of-way for the purposes contemplated will not interfere with the uses and purposes for which the park or monument was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file such stipulations and bond as may be required by the Director, National Park Service. Ordinarily, such a right-of-way may be allowed only on a showing of absolute necessity.

(f) *Oregon and California Railroad and Coos Bay Wagon Road grant lands.* (1) All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was revested in the United States by the act of June 9, 1916 (39 Stat. 218), and reconveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the Bureau, in advance of construction, such sum of money as may be determined to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).

(2) The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

§ 2234.1–4 Approval of right-of-way.

(a) *Completed application and reports.* (1) Where an application is complete and in conformity with the law and regulations and all required reports have been obtained and it is determined that the approval of the right-of-way will not be contrary to the public interest, including that of the Government, the manager will approve the right-of-way.

(2) An application which does not conform with the law or regulations under which filed or the approval of which would be inconsistent with the public or Government interest, will be rejected.

(3) Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the manager is required to clear the application with such agency.

(b) *Use of right-of-way.* (1) *Proof of construction.* A period of 5 years from the date of the approval of the right-of-way is usually allowed for construction unless a different period is provided by statute. Upon completion of construction, proof thereof should be submitted to the manager, consisting of a statement and certificate furnished by the holder of the right-of-way. The statement and certificate are embodied in Forms 5 and 6, Appendix B, which should be modified so as to be appropriate to the act and to the nature of the project. If, in construction, a substantial deviation from the location shown on the original map is planned or made, the party in interest must file a duly executed relinquishment of the unused portion of the right-of-way accompanied by a map of amended location of the right-of-way for the project as actually constructed. The map of amended location must be prepared in accordance with § 2234.1–2(d)(1) and must be filed before or as soon as possible after the deviation is made. The relinquishment may be prepared so as to become effective upon approval of the amended location. Any deviation made prior to such approval will be at the risk of the applicant.

(2) *Nonconstruction, abandonment or nonuse.* Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 2234.1–5 Revocation or cancellation.

(a) *Order of cancellation.* All rights-of-way approved pursuant to this part, except those granted for pipelines pursuant to section 28 of the act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U.S.C. 185), shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of

superintendent in charge.

Congress.

the terms or conditions of the right-of-way. No right-of-way shall be deemed to be canceled except on the issuance of a specific order of cancellation.

(b) *Change in jurisdiction over or disposal of lands.* (1) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(2) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

(c) *Transfer of right-of-way.* (1) Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a right-of-way acquired under any of the acts, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in triplicate in accordance with § 2234.1–2(a) for approval; must be accompanied by the same showing of qualifications of the assignee as is required of applicants; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the right-of-way. No assignment will be recognized unless and until approved.

(2) All filings of transfers, by assignment, lease, operating agreement, or otherwise, made pursuant to this section, except by States or agencies or instrumentalities thereof, must be accompanied by an application service fee of $10 which will not be returnable.

(d) *Disposal of property on termination of right-of-way.* Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

§ 2234.1–6 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided,* That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in §§ 2234.2–4, 2234.2–5, 2234.3–1, and 2234.3–2.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way or easement. After default has occurred, no structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

§ 2234.2 For roads, railroads, station grounds, wagon roads and tramways.

§ 2234.2–1 For railroads, wagon roads and tramways in Alaska.

(a) *General statement.* (1) The rights-of-way for railroads, wagon roads, and tramsways in the State of Alaska, granted by sections 2 to 9, inclusive, of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411–419) does not convey an estate in fee in the lands used for such purposes or in the lands used for station and terminal facilities. The grant is merely of a right of use for the necessary and legitimate purposes of the roads, the fee remaining in the United States, except as to lands authorized to be sold under section 6 by the Secretary of the Interior, "upon such expressed conditions as in his judgment may be necessary to protect the public interests." The nature of these conditions will depend upon the public necessities and will be governed by the particular circumstances of each case. These sections authorize the Secretary of the Interior to approve maps and plats affecting unsurveyed as well as surveyed land, and while it is not obligatory on the part of grantees to file additional maps and plats after survey of the lands, showing connections with the public surveys, and the smallest legal subdivisions of all lands affected, by so doing the grants and the extent thereof could be properly recorded on the records of the Bureau of Land Management and readily determined.

(2) All persons entering public lands, to part of which a right-of-way has attached, take the same subject to such right-of-way, the latter being computed as a part of the area of the tract entered.

(3) Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnations of the right-of-way across the same may be made in accordance with the provisions of section 4 of the said act of May 14, 1898.

(b) *Applications by individuals, associations or corporations*—(1) *Incorporated companies.* (i) Any incorporated company desiring to obtain the benefits of this part is required to file the following papers and maps:

(*a*) A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State where organized.

(*b*) A copy of the State law under which the company was organized, with the certificate of the governor or secretary of the State that the same is the existing law.

(*c*) When said law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

(*d*) A certificate from the Secretary of the State of Alaska showing that the Company has complied with the State law.

(*e*) The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory where organized. (Form 1, Appendix C).

(*f*) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, Appendix C).

(*g*) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the Bureau of Land Management by the governor or secretary of any State, a company organized in such State or Territory may file, in lieu of the requirements of subdivision *b* of this paragraph, a certificate of the governor or Secretary of the State that

no change has been made since a given date, not later than that of the laws last forwarded.

(*h*) Maps, field notes, and other papers as hereinafter required.

(ii) No forms are prescribed for the proofs required in subdivision (i) (*a*)–(*d*) as each case must be governed to some extent by the laws of the State.

(iii) For forms 1 to 8, inclusive, referred to under this section, see Appendix C of this subchapter.

(2) *Individuals or associations of individuals.* Individuals or associations of individuals making applications for permits, under section 6 of the act (30 Stat. 411; 48 U.S.C. 416), for tramways or wagon roads are required to file evidence of citizenship. In the case of associations a statement must be filed by the principal officer thereof, giving a list of its members and stating that the list includes all the members. Evidence of citizenship must be furnished for each member of the association. Individuals and associations will also be required to file the maps, field notes, and other papers hereinafter required.

(c) *Maps and plats*—(1) *Preparation of maps and plats.* All maps and plats must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey thereof, wherever such surveys have been made. The word "profile" as used in the act is understood to intend a map of alignment. No profile of grades will be required.

(2) *Data required on maps.* (i) The maps should show any other road crossed or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map should be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. Station numbers should also be given on the map in all cases where changes of numbering occur and where known lines of survey, public or otherwise, are crossed, with distance to the nearest permanent monument or other mark on such line. The map must also show the lines of reference of initial, terminal, and intermediate points, with their courses and distances.

(ii) When the lines are located on surveyed land, the maps must show the 40-acre subdivisions; when on unsurveyed land, a meridian should be drawn on maps through initial and terminal points and at intervals of not more than 6 miles, intermediate points.

(d) *Application requirements*—(1) *Data required in field notes; instructions as to surveys.* Typewritten field notes, with clear carbon copies, are preferred, as they expedite the examination of applications. All monuments and other marks with which connections are made should be fully described, so that they may be easily found. The field notes must be so complete that the line may be retraced on the ground. On account of the conditions existing in Alaska surveys based wholly on the magnetic needle will not be accepted. In that case a true meridian should be established, as accurately as possible, at the initial point. It should be permanently marked and fully described. The survey should be based thereon and checked by a meridian similarly fixed at the terminal point and, when the line is a long one, by intermediate meridians at proper intervals. On account of the rapid convergence of the meridians in these latitudes such intermediate meridians should be established at such intervals as to avoid large discrepancies in bearings. It will probably be found preferable to run by transit deflections from a permanently established line, with frequent and readily recoverable reference lines permanently marked; and in such surveys occasional true bearings should be stated, at least approximately. On all lines of railroad the 10-mile sections should be indicated and numbered, and on maps of tramways and wagon roads the 5-mile sections shall likewise be indicated and numbered.

(2) *Filing of papers.* The maps, field notes, and accompanying papers should be filed in the land office for the district where the proposed right of way is located.

(3) *Connections with other surveys.* Connections should be made with other surveys, public or private, whenever possible; also with mineral monuments and other known and established marks. When a sufficient number of such points are not available to make such connections at least every 6 miles, the surveyor must make connection with natural objects or permanent monuments.

(4) *Permanent monuments or marks.* Along the line of survey, at least once in every mile, permanent and easily recoverable monuments or marks must be set and connected therewith, in such positions that the construction of the road will not interfere with them. The locations thereof must be indicated on the maps. All reference points must be fully described in the field notes, so that they may be relocated, and the exact point used for reference indicated.

(5) *Designation of termini.* The termini of a line of road should be fixed by reference of course and distance to a permanent monument or other definite mark. The initial point of the survey and of station, terminal, and junction grounds should be similarly referred. The maps, field notes, engineer's certificate, and applicant's certificate (Forms 3 and 4, Appendix C), should each show these connections.

(6) *Statement and certificates required.* The engineer's certificate and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding subparagraph) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4, Appendix C.) Station, terminal, or junction grounds must be described by initial point (as in the preceding subparagraph) and area in acres (Forms 7 and 8, Appendix C) when they are located on surveyed land, and the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. When the applicant is an individual the word "applicant" should be used instead of "company," and such other changes made as are necessary on this account.

(7) *Additional width for right-of-way.* Where additional width is desired for railroad right-of-way on account of heavy cuts or fills, the additional right-of-way desired should be stated, the reason therefor fully shown, the limits of the additional right-of-way exactly designated, and any other information furnished that may be necessary to enable the manager to consider the case before giving it his approval.

(8) *Preliminary map and field notes.* The preliminary map authorized by the proviso of section 4 of the act will not be required to comply so strictly with the foregoing instructions as maps of definite location; but it is to be observed that they must be based upon an actual survey, and that the more fully they comply with § 2234.2–1 the better they will serve their object, which is to indicate the lands to be crossed by the final line and to preserve the company's prior right until the approval of its maps of definite location. Unless the preliminary map and field notes are such that the line of survey can be retraced from them on the ground, they will be valueless for the purpose of preserving the company's rights. The preliminary map and field notes should be in duplicate, and should be filed in the land office in order that proper notations may be made on the records as notice to intending settlers and subsequent applicants for the right of way.

(9) *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a scale of 1,000 feet to an inch when necessary, or, in extreme cases, to 500 feet to an inch. No other scales must be used and should be so selected as to avoid making maps inconveniently large for handling. In most cases, by furnishing separate field notes, an increase of scale can be avoided. Plats of station, terminal, and junction grounds, etc., should be drawn on a scale of 500 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

(10) *Plats of station, terminal, and junction grounds.* Plats of station, terminal, and junction grounds must be prepared in accordance with the direction for maps of lines of routes. Whenever they are located on or near navigable waters the shore line must be shown, and also the boundaries of any other railroad grounds or other claims located

on or near navigable waters within a distance of 80 rods from any point of the tract applied for.

(11) *Showing required in application.* (i) All applications for permits made under section 6 of the act should state whether it is proposed to collect toll on the proposed wagon road or tramway; and, in case of wagon roads, the application must be accompanied by satisfactory evidence, corroborated by a statement, tending to show that the public convenience requires the construction of the proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. In all cases, if the proposed line of road shall be located over any road or trail in common use for public travel, a satisfactory statement, corroborated by statement, must be submitted with the application, showing that the interests of the public will not be injuriously affected thereby.

(ii) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(e) *Evidence of construction*—(1) *Statement and certificates required when road is constructed.* When the road is constructed a certificate of the engineer and a certificate of the applicant (Forms 5 and 6, Appendix C) should be filed in the proper land office in duplicate. In case of deviations from the map previously approved, whether before or after construction, there must be filed new maps and field notes in full, as in this part provided, bearing proper forms, changed to agree with the facts in the case, and the location must be described in the forms as the amended survey and the amended definite location. In such cases, the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

(2) *Action where required evidence is not filed.* Unless the proper evidence of construction is filed within the time prescribed by the act for the construction of each section of the road, appropriate steps will be taken looking to the cancellation of the approval of the right of way and the notations thereof on the records.

(f) *Charges for transportation of passengers and freight.* (1) In the case of a wagon road or tramway built under permit issued under section 6 of the act upon which it is proposed to collect toll, a printed schedule of the rates for freight and passengers should also be filed with the manager for his consideration and approval at least 60 days before the road is to be opened to traffic, in order to allow a sufficient time for consideration, inasmuch as by section 6 it is made a misdemeanor to collect toll without written authority from the Secretary of the Interior. In the case of a wagon road satisfactory evidence, corroborated, must be submitted with said schedule, showing that at least an average of $500 per mile has been actually expended in constructing such road. These schedules must be submitted in duplicate, one copy of which, bearing the approval of the manager, will be returned to the applicant if found satisfactory. Said schedules shall be plainly printed in large type.

(2) Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

(R.S. 2478; 43 U.S.C. 1201)

§ 2234.2–2 For railroads and station grounds outside of Alaska.

(a) *Authority.* The act approved March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939) grants rights-of-way to railroad companies through the public lands of the United States, for railroad and station ground purposes, and the act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525) authorizes the Secretary of the Interior to approve surveys and plats of such rights-of-way "over and across any forest reservation or reservoir site when in his judgment the public interest would not be injuriously affected thereby."

(b) *Nature of grant.* A railroad company to which a right-of-way is granted does not secure a full and complete title to the land on which the right-of-way is located. It obtains only the right to use the land for the purposes for which it is granted and for no other purpose, and may hold such possession, if it is necessary to that use, as long and only as long as that use continues. The Government conveys the fee simple title in the land over which the right-of-way is granted to the person to whom patent issues for the legal subdivision on which the right-of-way is located, and such patentee takes the fee subject only to the railroad company's right of use and possession. All persons settling on a tract of public land, to part of which right-of-way has attached, take the same subject to such right-of-way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right-of-way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of the Department of the Interior.

(c) *Location*—(1) *National forest.* When a right-of-way is located within a national forest the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest.

(2) *Proposed national forest; construction through forests.* (i) When a right-of-way is located within a proposed national forest the applicant must file such stipulation and execute such bond as may be required for the protection of such proposed forest.

(ii) No construction will be allowed in a national forest or a proposed national forest until an application for right-of-way has been regularly filed in accordance with the laws of the United States and has been approved, or has been considered by the Department of the Interior, and permission for such construction has been specifically given.

(iii) All rights-of-way applications for railroads and station grounds within national forests must be accompanied by a service fee of $10 which will not be returnable.

(3) *Private lands and possessory claims.* Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnation of the right-of-way across the same may be made in accordance with the provisions of section 3 of the act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 936), or the right can be purchased as provided by section 2288 of the Revised Statutes, as amended by section 3 of the act of March 3, 1891 (26 Stat. 1097; 43 U.S.C. 174).

(d) *Material to be filed.* (1) Any railroad company desiring to obtain the benefits of the law is required to file with the manager of the land office for the district in which the principal terminus of the road is to be located:

(i) A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(ii) A citation of the law of the State or Territory under which the company was organized, and any amendments thereof.

(iii) If the law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territory officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(iv) When a company is operating in a State other than the State or Territory in which it is incorporated it must submit the certificate of the proper officer of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(v) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated. (Form 1, Appendix A.)

(vi) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, Appendix A.)

(2) No forms are prescribed for the proofs required in subparagraph (1) (i)-(iv) of this paragraph, as each case must be governed to some extent by the laws of the State or Territory.

(e) *Maps*—(1) *Maps of alignment.* (i) The word profile as used in this act is understood to intend a map of alignment. All such maps and plats of station grounds are required by the act to be filed with the manager of the land office for the district where the right-of-way is located; but if the right-of-way is

located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. The maps must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey of the line of route or of the station grounds.

(ii) The maps should show any other road crossed, or with which connection is made, and whenever possible the station number on the survey therof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map would thereby be too much crowded to be easily read, then duplicate field notes should be filed separate from the map. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. In all cases station numbers should be given on the map where changes of numbering occur and where the lines of the public surveys are crossed, with distances to the nearest existing corner. The map must also show the lines of reference of initial and terminal points, with their courses and distances.

(2) *Field notes.* Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were run on true or magnetic bearings, and if run on magnetic bearings the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public-survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

(3) *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to the inch ordinarily, but when absolutely necessary the scale may be increased to 1,000 feet to the inch. These scales are fixed so that maps may be readily handled and filed. In most cases, by furnishing separate field notes an increase of scale may be avoided. Plats of station grounds should be drawn on a scale of 500 feet to the inch, and must be filed separately from the map of the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

(4) *Public-land subdivisions.* All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and all lands affected by the right-of-way the smallest legal subdivisions (40-acre tracts and lots) must be shown.

(5) *Termini of road.* The termini of the line of road should be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, field notes, engineer's statement, and president's certificate (Forms 3 and 4, Appendix A), should each show these connections. The company must certify in Form 4 that the road is to be operated as a common carrier of passengers and freight. A tract for station grounds must be similarly referenced and described on the plat and in Forms 7 and 8 (Appendix A), except when the tract conforms to the subdivisions of the public survey, in which case it may be described in the forms according to the subdivisions.

(6) *Connections on unsurveyed lands.* When either terminal of the line of route is upon unsurveyed land it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant and the single bearing and distance from the terminal point to the corner must be computed and noted on the map in the engineer's statement, and in the president's certificate (Forms 3 and 4, Appendix A). The notes and all data for the computation of the traverse must be given.

(7) *Connections with monuments on unsurveyed land.* When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. There must be given an accurate description of the mark and full data of the traverse, as required above. The engineer's statement and president's certificate (Forms 3 and 4, Appendix A), must state the connections. These monuments are of great importance.

(8) *Surveyed and unsurveyed land.* (i) When the line of route lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately stated in Forms 3 and 4 (Appendix A) by connection of termini and length, as though each portion were independent.

(ii) When lands desired for station grounds lie partly on unsurveyed land, the areas of the several parts on surveyed and unsurveyed land must be separately stated on the map and in Forms 7 and 8 (Appendix A).

(iii) Lines of route or station grounds lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to the regulations in this part, but the approval will only relate to that portion traversing the surveyed lands.

(9) *Unsurveyed land.* Maps of lines of route or plats of station grounds lying wholly on unsurveyed lands may be received and placed on file in the land office of the district in which the same is situated, for general information, and the date of filing will be noted thereon; but the same will not be approved as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps or plats will not dispense with the filing of maps or plats after the survey of the lands and within the time limited in the act granting the right-of-way. If these maps or plats are in all respects regular when filed, they will receive approval. In filing such maps or plats the initial and terminal points will be fixed as indicated in paragraph (e) (6) and (7) of this section.

(10) *Connections with public survey corners.* Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.

(11) *Statement and certificate required.* The engineer's statement and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made. (See Forms 3 and 4, Appendix A.) Station grounds must be described by initial point and area in acres (see Forms 7 and 8, Appendix A), and when they are on surveyed land the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein.

(12) *Spurs or branch lines.* Where right-of-way is desired for spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer branch lines separate maps should be filed.

(13) *Notations on maps and records.* When maps are filed, the manager will note on each the name of the land office and the date of filing, over his written signature. Notations will also be made on the records of the land office, as to each unpatented tract affected, that application for right-of-way is pending, giving date of filing and name of applicant. The manager will certify on each map, over his written signature, that unpatented land is affected by the proposed right-of-way. The maps and field notes will be approved by the manager in duplicate. Any valid right existing at the date of the filing of the right-of-way application will not be affected by the filing or approval thereof. If no unpatented land is involved in the application the manager will reject it, allowing the usual right of appeal.

(f) *Evidence of construction.* When the railroad is constructed, a statement of the engineer and certificate of the president (Forms 5 and 6, Appendix A) must be filed in the land office, in duplicate. No new map will be required, except in case of deviations from the right-of-way previously approved, whether before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended, or bear a statement describing them, and the location must be described in

the forms as the amended survey and the amended definite location. In such cases the company must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

(R.S. 2478; 43 U.S.C. 1201)

§ 2234.2–3 For tramroads and logging roads.

(a) *Over public lands generally*—(1) *Authority.* (i) The act of January 21, 1895 (28 Stat. 635; 43 U.S.C. 956), authorizes the Secretary under such general regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525; 43 U.S.C. 665, 958). Where the authorized officer determines it to be in the public interest, he will require applicants under this section to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under paragraph b of this section with appropriate modifications to meet local conditions: *Provided,* That where the land over which the right-of-way is requested under the jurisdiction of an agency other than the Bureau of Land Management, such requirement shall be made only with the concurrence of the authorized officer of such agency. The authorized officer may require an applicant for or holder of a tramroad right-of-way to execute a bond on a form provided by the Director, modified to refer to the applicable sections of this part, in an amount, not less than $500 per mile or fraction thereof, to be determined by the authorized officer conditioned on compliance with §§ 2234.1–1 to 2234.1–5 and subparagraph (1) and (2) of this paragraph. The arbitration procedures involved in the stipulations shall be in accordance with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

(ii) In the opinion of July 16, 1942 (68 T.D. 29), the Solicitor of the Department of the Interior held that the act of February 15, 1901, (31 Stat. 790; 43 U.S.C. 959), superseded the part of the 1895 act authorizing rights-of-way for canals and reservoirs.

(2) *Tramroads defined; special provisions for temporary rights-of-way.* (i) Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

(ii) An application pursuant to subparagraph (1) of this paragraph and this section for a temporary right-of-way to be used for a period of not more than six months may be filed with the officer in charge of any local office of the Bureau of Land Management having jurisdiction over the lands. No special form for such an application is required but it should state whether the applicant or applicants are citizens of the United States and if a corporation, whether it is qualified under State law to acquire the right-of-way applied for and be accompanied by three copies of a map or sketch which shows the location of the right-of-way with a degree of accuracy sufficient for its position on the ground in relation to the lines and corners of the public land surveys or in relation to some prominent topographic feature, to be readily determined. Such a map or sketch or statement as to citizenship or qualification may be accepted as the basis for a permit for a temporary right-of-way even though it does not meet the requirements of other regulations in this part, if in the opinion of the authorized officer it would be in the public interest to do so. Within the discretion of the issuing officer, the holder of a temporary permit may be granted a single extension of the permit for a period of not more than six months. Notwithstanding the provisions of § 2234.1–6 the charge for use and occupancy of public lands for such temporary rights-of-way shall be at the rate of 50 cents per mile or fraction thereof per month or fraction thereof, with a minimum rental charge of $5 per right-of-way: *Provided,* That no rental charge shall be made for the use and occupancy of public lands for such temporary rights-of-way to be used for the purpose of removing mine or quarry products, timber, or timber products which have been acquired from the United States under contract or permit.

(b) *Over O. and C. and Coos Bay revested lands*—(1) *Authority.* (i) The act of January 21, 1895 (28 Stat. 635, 43 U.S.C. 956) authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, or quarrying or of cutting timber and manufacturing timber. The act of January 21, 1895, is made applicable to the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(ii) The act of August 28, 1937 (50 Stat. 874) provides for the conservation and management of the O. and C. lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

(2) *Statement of policy.* (i) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(ii) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(iii) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(iv) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees (*a*) rights-of-way across lands controlled directly or indirectly by him; (*b*) the right to use, to the extent indicated in subparagraphs (8) and (9) of this paragraph, any portions of the road system or rights-or-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect; (*c*) the right to extend such road system across the operator's lands to reach federal roads or timber; and (*d*) in addition, in the limited circumstances set forth in subparagraph (7) (ii) of this paragraph the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as

may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(v) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with subparagraphs (10) to (14) of this paragraph.

(vi) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under paragraph (b) without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(vii) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(viii) The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be revocable by the district forester, the State Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with subparagraph (7) (i) and (iv) of this paragraph to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(ix) The authorized officer may, in his discretion, issue to private operators rights-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in subparagraphs (8) and (9) of this paragraph any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

(3) *Definitions.* Except as the context may otherwise indicate, as the terms are used in this paragraph:

(i) "Bureau" means Bureau of Land Management.

(ii) "Timber of the United States" or "federal timber" means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(iii) "State Director" means the State Director, Area 1, Bureau of Land Management, or his authorized representative.

(iv) "State Director" means the State Director, Bureau of Land Management, or his authorized representative.

(v) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(vi) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(vii) "District Forester" means a District Forester of the Bureau who is stationed in the O. and C. area.

(viii) "Tramroads" include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(ix) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(x) "Licensee" of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(xi) "Direct control" of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with this paragraph.

(xii) "Indirect control" of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(*a*) A principal, disclosed or undisclosed, of the applicant; or

(*b*) A beneficiary of any trust or estate administered or established by the applicant; or

(*c*) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(*d*) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(*e*) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

(4) *Nature of permit.* (i) Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of subparagraphs (19) and (23) of this paragraph such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to subparagraph (21) of this paragraph.

(ii) A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in subparagraphs (11), (13) and (14) of this paragraph.

(5) *Construction in advance of permit.* The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with subparagraphs (6) (i), (ii), (7) and (15) of this paragraph.

(6) *Applications*—(i) *Filing.* (*a*) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form approved by the Director and filed in the office of the appropriate district forester. Application forms will be furnished upon request.

(*b*) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the appropriate district forester prior to the time the permit applied for has been issued to, and accepted by, the applicant.

(ii) *Contents.* (*a*) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 1811 of this chapter.

(*b*) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(*c*) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile. Showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms as approved by the Director.

(*d*) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(*e*) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of subparagraph (3) (xi) of this paragraph, the portions thereof which the applicant indirectly controls within the meaning of subparagraph (3) (xii) of this paragraph, and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

(iii) *Trespass.* The mere filing of an application under this paragraph does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the authorized officer and delivered to the applicant. Any unauthorized use of O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Where there has been such a trespass, no permit shall be issued to the alleged trespasser unless (*a*) the trespass claim is fully satisfied; or (*b*) the alleged trespasser files a bond conditioned upon payment of the amount of damages found by the State supervisor, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or (*c*) the State Director finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability or as to the extent of his liability and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States.

CROSS REFERENCE: For disposal of timber or material to a trespasser, see § 9239.0–9 of this chapter.

(7) *Right-of-way and road use agreement; recordation.* (i) Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in subparagraph (2) of this paragraph, he may require the applicant, as a condition precedent to the issuance of the permit:

(*a*) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(*b*) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

(ii) In addition to the private road systems and rights-of-way described in subdivision (i) of this subparagraph, in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

(iii) Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subparagraph (2) of this paragraph he may issue a permit without requesting the applicant to grant any rights to the United States under this subparagraph.

(iv) Any grant of rights to the United States under this section shall be executed or approved by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district forester.

(8) *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by subparagraphs (10) and (13) of this paragraph.

(9) *Duration and location of rights granted or received by the United States.* The rights-of-way granted by the United States under any permit issued under subparagraph (18) of this paragraph, subject to the provisions of subparagraph (21) of this paragraph, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

(10) *Permittee's agreement with United States respecting compensation and adjustment of road use.* (i) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital cost; provisions for road maintenance; the use in addition to the uses set forth in subparagraph (8) of this paragraph which the United States and its licensees may make of the road system involved, a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the

filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(ii) The provisions of subparagraphs (11) to (14) of this paragraph shall not be applicable to any matters embraced in an agreement made pursuant to this section.

(11) *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (i) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under subparagraph (10) of this paragraph, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by subparagraph (14) of this paragraph. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

(ii) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by subparagraph (8) of this paragraph. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(iii) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(iv) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

(12) *Compensation payable by United States to permittee for use of road.* In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under subparagraph (10) of this paragraph covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cause made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

(13) *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (i) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under subparagraph (10) of this paragraph covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(ii) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by subparagraph (14) of this paragraph.

(iii) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

(14) *Arbitration procedure.* (i) Within ten days after the delivery of a written request for arbitration under subparagraphs (11) or (13) of this paragraph each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon

for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(ii) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both subparagraphs (11) and (13) of this paragraph.

(iii) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in subparagraphs (11) and (13) of this paragraph for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the appropriate district director or the State Director, either personally or by registered mail.

(iv) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matter as may appear relevant to the arbitrators.

(15) *Payment required for O. and C. timber.* An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

(16) *Payment to the United States for road use.* (i) A permittee shall pay a basic fee of five dollars per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for five years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than five years, the basic fee for each five-year period or for the remainder of the last period, if less than five years, must be paid in advance at five-year intervals: *Provided, however,* That in those cases where the permittee has executed under subparagraph (7) of this paragraph an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under paragraph (b) of this section.

(ii) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. Where such road is subject to recreational and other authorized uses, an allowance, representing a reasonable allocation for such uses, shall be deducted from the replacement costs of the road before the amortization item is computed. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under § 2234.2–3(b): *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and subparagraph (11)(ii) of this paragraph, as may be applicable.

(iii) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with subdivision (ii) of this subparagraph except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however,* That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with subparagraph (7) of this paragraph to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

(17) *Bond in connection with existing roads.* An applicant for a permit to use an existing Government road which is under the administrative jurisdiction of the Bureau for timber hauling purposes other than for federal timber acquired under a free-use permit, will be required, for the protection of such existing road, to execute a bond on a form approved by the Director in an amount to be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with this paragraph and the terms and conditions of the permit.

(18) *Approval of permit.* (i) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form approved by the Director.

(ii) The authorized officer may waive the requirements of subparagraphs (6)(ii)(c), (e) and (17) of this paragraph in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

(19) *Terms and conditions of permit.* (i) As to all permits: Every permittee shall agree:

(a) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under subparagraph (17) of this paragraph with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations, the permittee shall unreasonably withhold his assent, the authorized officer shall refer, the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer and, if the permittee nevertheless unreasonably withholds

such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(b) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the district forester and making payment therefor.

(c) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(d) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to subparagraphs (11), (13), and (14) of this paragraph.

(e) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under subparagraph (7) of this paragraph to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(f) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(g) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under this paragraph to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(h) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(i) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use; *Provided, however,* That the road and all usable road improvements shall be left in place.

(j) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under subparagraph (7) of this paragraph.

(k) To grant to the United States, upon request of an authorized officer, in lieu of the rights-of-way across legal subdivisions granted pursuant to subparagraph (7) of this paragraph, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with subparagraph (12) of this paragraph. The authorized officer shall waive the requirement under this subparagraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(ii) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(a) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(b) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

(20) *Assignment of permit.* Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the appropriate district forester for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by subparagraph (6) (ii) and (7) of this paragraph; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

(21) *Causes for termination of permittee's rights.* (i) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(a) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(b) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(ii) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, will the permittee shall fail to comply with any of the problems of said regulations or make defaults in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(iii) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(iv) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to subparagraphs (11), (13) and (14) of this paragraph.

(22) *Remedies for violations by licensee.* (i) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(ii) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his

belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to subparagraph (24) of this paragraph and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

(23) *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

(24) *Appeals.* An appeal pursuant to Parts 1840 and 1850 of this chapter, may be taken from any final decision of the authorized officer, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

(28 Stat. 635, as amended, sec. 11, 39 Stat. 223, sec. 6, 40 Stat. 1181, sec. 5, 50 Stat. 875; 43 U.S.C. 956, 1181c)

§ 2234.2–4 Under Title 23, United States Code.

(a) *Authority.* (1) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, the Secretary of Commerce may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Commerce in this connection.

(2) Title 23, United States Code, section 317, provides that:

(i) If the Secretary of Commerce determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Commerce shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(ii) (*a*) If within a period of four months after such filing the Secretary of such Department shall not have certified to the Secretary of Commerce that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.

(*b*) By decision of the Secretary, Nevada Department of Highways, A.24161, September 1945, it was held that the law imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

(iii) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Commerce and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

(b) *Application; grants.* (1) (*a*) Except where an application involves lands wholly within an Indian reservation, applications for rights-of-way and material sites under Title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, with the maps required by subparagraph (1) of § 2234.1–2(d) shall be filed by the appropriate State highway department in the manner prescribed by § 2234.1–2(a). Applications for lands wholly within an Indian reservation shall be filed in the Office of the superintendent of the Bureau of Indian Affairs agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

(*b*) When the lands involved are under the jurisdiction of the Department of the Interior an applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the Bureau or Office having jurisdiction over the lands to ascertain whether or not the use of appropriation of the lands for right-of-way purposes is consistent with the management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

(2) The appropriate state highway department will forward a copy of each application and map filed with the Department of the Interior to the authorized officer of the Bureau of Public Roads for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

(3) After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, United States Code, the authorized officer of the Bureau of Land Management will notify the applicant and the authorized officer of the Bureau of Public Roads either (i) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (ii) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

(4) Grants of rights-of-way under Title 23, United States Code, by the authorized officer of the Bureau of Land Management will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (i) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, United States Code, and (ii) any conditions which he deems necessary. Grants of highway rights-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the Bureau of Land Management deems appropriate.

(c) *Additional rights-of-way within highway rights-of-way.* (1) No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (i) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (ii) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation or (iii) where

the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 2234.1–3(c), in connection with the construction and maintenance of such facilities.

(2) Except as modified by subparagraph (1) of this paragraph, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

(5 U.S.C. 22; 43 U.S.C. 2, 1201, 1371)

§ 2234.2–5 Over public lands under R.S. 2477.

(a) *Authority.* R.S. 2477 (43 U.S.C. 932), grants rights-of-way for the construction of highways over public lands, not reserved for public uses.

(b) *Effective date and extent of grant.* (1) Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. Rights-of-way granted by R.S. 2477 do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of such highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted by R.S. 2477 except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under § 2234.4–1, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under § 2234.5–1 inclusive, for pipe line facilities subject to this exception.

(2) Holders of grants under R.S. 2477 shall be subject to the terms and conditions of § 2234.1–3(c) (2), (3), (4), (5), (9), (11). Where the holder of the highway consents to the construction of usual highway facilities, as provided above, such holder shall be responsible for compliance with the designated subparagraphs of § 2234.1–3(c) in connection with the construction and maintenance of such facilities.

(c) *Procedure when reserved land is involved; rights-of-way over revested and reconveyed lands.* (1) When a right-of-way is desired for the construction of a highway under R.S. 2477 over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, and when a right-of-way is desired for the construction of a highway under R.S. 2477 over the Revested and Reconveyed Lands, an application should be made in accordance with § 2234.1–2(a). Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected.

(2) Where reserved lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application, unless and until the reservation shall have been revoked or modified so as to permit construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve.

(3) Where Revested and Reconveyed Lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application unless and until the authorized officer of the Bureau of Land Management shall grant permission to construct the highway, subject to such terms and conditions as he deems necessary for the adequate protection and utilization of the lands, and for the maintenance of the objectives of the act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a).

(R.S. 453; 43 U.S.C. 1201)

§ 2234.3 For canals, ditches and reservoirs.

§ 2234.3–1 For irrigation (Act of March 3, 1891, as amended).

(a) *Authority*—(1) *Provisions of basic act.* (i) Section 18 of the act of March 3, 1891 (26 Stat. 1101), as amended by the acts of March 4, 1917 (39 Stat. 1197), and May 28, 1926 (44 Stat. 668; 43 U.S.C. 946) authorizes the Secretary to grant rights-of-way for irrigation and drainage purposes over public lands and reservations to the extent of the ground occupied by the water of any reservoirs and any canals and laterals and 50 feet on each side of the marginal limits thereof and such additional right-of-way as may be deemed necessary for the proper operation and maintenance of said reservoirs, canals, and laterals.

(ii) Section 19 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 947), provides that a map of the canal or ditch and reservoir must be filed within twelve months after the location of ten miles of a canal if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States; that upon the approval thereof by the Secretary, the same shall be noted upon the record and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

(iii) Section 20 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 948), provides that this act shall apply to all canals, ditches, or reservoirs theretofore or thereafter constructed, whether by corporations, individuals, or association of individuals, on the filing of the certificates and maps as therein provided; that if any section of the project is not completed within 5 years after location, the right-of-way shall be forfeited as to the uncompleted canal, ditch, or reservoir, to the extent that the same is not completed at the date of forfeiture.

(iv) Section 21 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 949), provides that nothing in this act shall authorize the occupancy of such right-of-way except for the purpose for which it was approved, and then only so far as may be necessary for the construction, maintenance, and care of the project.

(v) The act of March 3, 1891, as amended, is applicable to rights-of-way for pipelines, flumes, or other conduits, although they are not specifically mentioned in the act, if water is conveyed primarily for irrigation or drainage puposes.

(vi) Material on adjacent lands: The word "adjacent", as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L.D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L.D. 566). These decisions were rendered under the Railroad Right-of-Way Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934), and are applied to the act of March 3, 1891, since the wording with respect to the use of material is the same.

(2) *Use subsidiary to main purpose of irrigation.* Section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U.S.C. 951), authorizes the use of rights-of-way approved under the act of March 3, 1891, for purposes subsidiary to the main purpose of irrigation.

(3) *Caretaker's building sites.* The act of March 1, 1921 (41 Stat. 1194; 43 U.S.C. 950), authorizes the Secretary, except as to lands within national forests, to grant permits or easements for not to exceed 5 acres of ground adjoining the right-of-way at each of the locations, to be determined by the Secretary, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by the act of March 3, 1891, as amended.

(4) *Showing required for additional right-of-way.* The act of May 28, 1926, (44 Stat. 668; 43 U.S.C. 946), amended section 18 of the act of March 3, 1891, so as to authorize, if needed, a right-of-way additional to the 50 feet allowed by the section for operation and maintenance of reservoirs, canals,. ditches, and laterals. To obtain such additional right-of-way, an explanatory showing must accompany the application. This should consist of a statement by the applicant's engineer or surveyor setting

forth succinctly the extent of the additional right-of-way required and the necessity therefor. The additional right-of-way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right-of-way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

(b) *Procedure when unsurveyed land is involved.* (1) Maps filed under the said act, as amended, showing canals, ditches, laterals, and reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps conform to these regulations, but the approval will only relate to that portion of the right-of-way traversing the surveyed land.

(2) Maps showing canals, ditches, laterals, and reservoirs lying wholly on unsurveyed lands may be received and placed on file in the Bureau of Land Management for general information. The date of filing will be noted thereon; but the maps will not be approved as the act makes no provision for the approval of any but maps showing locations on surveyed lands. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified in the act, and if the maps are regular in all respects they will receive the manager's approval.

(3) By letter of August 21, 1937, approved by the Department in the case of the Twin Lakes Reservoir and Canal Company (Denver 045465), it was held that a right-of-way may be acquired under the 1891 act, by actual construction of a project in advance of the filing of an application and approval of the right-of-way over unsurveyed lands, upon the same principle applied to railroads under the act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939).

(c) *Segregated reservoir sites.* The act of February 26, 1897 (29 Stat. 599; 43 U.S.C. 664), permits the approval of applications under the act of March 3, 1891, for rights-of-way upon reservoir sites reserved under authority of the act of October 2, 1888 (25 Stat. 526; 43 U.S.C. 662), and August 30, 1890 (26 Stat. 371, 391; 43 U.S.C. 662).

(R.S. 161, 453 U.S.C. 1201)

§ 2234.3–2 For watering livestock (Act of January 13, 1897, as amended).

(a) *Authority.* (1) By the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), it is provided that any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding 160 acres, so long as such reservoir is maintained and water kept therein for such purpose. The act does not apply to lands in grazing districts, and applications for stock-watering reservoirs on such lands should be filed under section 4 of the Taylor Grazing Act (48 Stat. 1271; 43 U.S.C. sec. 315c) and Part 4110 of this chapter.

(2) Section 1 of the act of January 13, 1897, as amended by the act of March 3, 1923 (42 Stat. 1437; 43 U.S.C. 952), authorizes the Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, to grant permission to fence reservoirs constructed under the act of January 13, 1897, in order to protect livestock, to conserve water, and to preserve its quality and conditions, provided, that such reservoir shall be kept open to the free use of any persons desiring to water animals of any kind.

(b) *Declaratory statement*—(1) *Form of application.* To apply for a reservoir site under this section, the applicant must file with the manager a declaratory statement drawn in accordance with Form 7, Appendix B together with a nonrefundable application service fee of $10. No other application is necessary.

(2) *Action on declaratory statements; size, location, and number of reservoir sites.* In acting upon these statements the following general rules will be applied:

(i) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity, not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity, not more than 80 acres can be reserved. For reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity, not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more, 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, and troughs, the regulations requiring a minimum capacity of 250,000 gallons may be waived upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs and facilities to properly accommodate all cattle likely to water at the place in question.

(ii) Not more than 160 acres shall be reserved for this purpose in any section.

(iii) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(iv) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(v) Lands so reserved shall be kept open to the free use of any person desiring to water animals of any kind. If the lands so reserved are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(vi) Notwithstanding his action in accepting any such declaratory statement, the manager will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

(c) *Time for construction.* The reservoir must be constructed and completed within 2 years after the filing of the declaratory statement; otherwise the right-of-way will be subject to cancellation.

(d) *Map of constructed reservoir.* After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped showing its location with relation to the public land surveys. The map must be prepared in accordance with the requirements of § 2234.1–2(d) and be filed with the manager and must bear Forms 8 and 9, Appendix B.

(e) *Approval of constructed project*—(1) *Adjudication and notation of records.* The map and papers will be examined to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory, they will be approved, and the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. When such reservation is made the manager will make the proper notations on his records.

(2) *Annual proof of maintenance.* In order that this reservation shall be continued, it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required, during the month of January of each year to file with the manager a statement to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 10 Appendix B will be used for this statement. Upon failure to file such statement, steps will be taken looking to the revocation of the reservation of the lands.

(f) *Procedure when unsurveyed land is involved.* (1) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bear when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary. (See paragraph (d) of this section.)

(2) Any reservation made pursuant to the act of January 13, 1897, secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and this section shall be preserved and established by subsequent public-land surveys and approved plats thereof. Therefore, when the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the line of the official survey showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions or aliquot parts of subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(3) An annual statement of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in this section shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

(g) *Application to fence reservoir; plat required.* Any person, company, or corporation desiring to secure the benefits of the act of March 3, 1923, should file in accordance with § 2234.1–2(a), an application, duly corroborated by at least two disinterested witnesses, setting forth such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and conditions. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind, and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range. There shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

(29 Stat. 484, 42 Stat. 1437; 43 U.S.C. 952–955)

§ 2234.4 For telephone and telegraph lines, transmission lines, radio and television sites, and water facilities.

§ 2234.4–1 (Under Acts of February 15, 1901 and March 4, 1911).

(a) *Statutory authority.* (1) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(2) The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(3) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D.C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

(4) The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

(b) *Procedures*—(1) *Applications for lands in national forests and other reservations.* (i) Applications under the act of February 15, 1901, for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 2234.1–2(a). (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(ii) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof. (See 29 Op. Atty. Gen. 303.)

(2) *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (i) All applications where it is sought to acquire a right-of-way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), and section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U.S.C. 951), must be submitted under the 1891 and 1898 acts, in accordance with the applicable regulations in this part.

(ii) An application may be filed under the act of February 15, 1901, for a stock-watering reservoir site. Rights-of-way will not be approved for stock-watering reservoirs on wildlife refuges. An application under the act for a "water plant" site or for a pipeline right-of-way may include an area for a well to supply the water; but if, because the lands affected are within a grazing district established under the Taylor Grazing Act of June 28, 1934 (43 Stat. 1269; 43 U.S.C. 315 et seq.), as amended, or for any other reason, the granting of a right-of-way for a stock-watering reservoir site, or for a water plant site or for a pipeline would adversely affect the interest of the Government, the application therefor will not be allowed. If the lands affected are within a grazing district, an application for a stock-watering reservoir or water well site should be filed under section 4 of said act of June 28, 1934, if the applicant is qualified under the section and if the reservoir or well is necessary to the care and management of the permitted livestock and primarily for that purpose. Regulations under the said section 4 are contained in § 4115.2–5(a) of this chapter.

(iii) Applications for rights-of-way for telephone, telegraph, and power transmission lines may also be submitted under either the act of February 15, 1901, or the act of March 4, 1911, in accordance with the applicable regulations contained

in this part. Applications for radio, television and other forms of communication transmitting, relay and receiving structures and facilities should be submitted under the act of March 4, 1911, as amended.

(iv) Any application under the act of March 4, 1911 for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(3) *Plant sites; buildings to be platted on maps.* (i) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

(ii) If the application is for a powerplant site it must also contain a statement giving a description of the proposed powerplant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the powerplant is to be interconnected with other generating facilities owned by the applicant or others; and whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes.

(4) *Transmission lines.* When an application is made for a right-of-way for a transmission line, it must also contain the following:

(i) A description of the plant or connecting generating plants which generate or will generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(ii) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

(iii) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(iv) If the line is to have a nominal voltage of 33 kilovolts or over, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(c) *Terms and conditions.* By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 2234.1–3(c).

(1) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact, and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(2) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to on compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 33 kilovolts or more must, in addition to the requirements of § 2234.1–2(e), execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy. Utilization by the Department of surplus or increased capacity shall be

subject to the following terms and conditions:

(a) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of elecrtic power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(b) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(c) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(d) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(e) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(f) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(g) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(h) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy, the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(i) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(j) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(k) As used in this section, the term "transmission facility" includes (a) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (b) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(l) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(6) Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through the public lands and reservations must be filed and approved before any rights can be claimed thereunder.

(7) Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

(8) Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner canceled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 2234.1–2(a), a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

(81 Stat. 790, 86 Stat. 1253; 43 U.S.C. 959, 961)

§ 2234.4–2 Boulder Canyon Project.

Section 5(d) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617d), authorizes the use by any agency receiving a contract for the purchase of electrical energy from Boulder Canyon Project of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

(R.S. 2478; 43 U.S.C. 1201)

§ 2234.5 For mineral leasing purposes.

§ 2234.5–1 For oil and natural gas pipe lines and pumping plant sites under the Mineral Leasing Act.

(a) *Authority.* (1) Section 28 of the act of February 25, 1920 (41 Stat. 449), as amended by the acts of August 21, 1935 and August 12, 1953 (49 Stat. 678; 67 Stat. 557; 30 U.S.C. 185), authorizes the Secretary to grant rights-of-way through public lands, including the forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of the act (41 Stat. 437; 30 U.S.C. 22, 48, 181) to the extent of the ground occupied by the said pipeline and 25 feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by him, and upon the express conditions that such pipeline, if for oil, or for natural gas and yet excepted from the common carrier provisions of section 28 of the act of February 25, 1930, as amended, as stated in subparagraph (2) of this paragraph shall be constructed, operated, and maintained as a common carrier and that every pipeline holder shall accept, convey, transport, or purchase without

discrimination oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amount as the Secretary of the Interior may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.

(2) The amendatory act of August 12, 1953, cited in subparagraph (1) of this paragraph provides that the common carrier provisions of section 28 of the act of February 25, 1920, shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (52 Stat. 821; 15 U.S.C. 717w) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(3) By opinion of the Attorney General of January 3, 1941 (40 Op. Atty. Gen. 9), and departmental decision, Chiles P. Plummer, A–23988, February 24, 1945, this statute was construed as not applying to purchase or acquired lands as they are not considered public lands within the meaning of the act.

(b) *Common carrier stipulation.* Each application for a pipeline right-of-way, if for oil, or for natural gas and the pipeline has not been excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in paragraph (a)(2) of this section, must include the following stipulation:

> The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

(c) *Use of pipeline.* The applicant shall state in the application the specific use, within the purview of the act, to which the pipeline is to be put, and any approval of the right-of-way shall be limited to such use, unless otherwise stated in the approval. No change in the use of the pipeline from that authorized by the approval of the right-of-way shall be allowed except as follows:

(1) In the case of pipelines engaged in interstate transportation, a change may be made only with approval first obtained from the authorized officer, and upon such terms and conditions as he may prescribe as a prerequisite to the approval of the change of use. If the authorized officer does not disapprove or otherwise act upon an application for a change in use by the end of the forty-fifth day after the application is filed, he shall be deemed to have approved it without conditions other than those previously existing.

(2) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of pipeline for the transportation of products with the purview of the act, from that specified in the approval of the right-of-way, provided, written notice of such change is filed with the manager not less than 15 days in advance of the actual change of use. Such notice must be accompanied by a showing as to whether the change in use is to be temporary or permanent, and a statement that such change will not result in any hardship or injustice to persons operating under Federal leases who may be dependent on the pipeline as the means of transportation of their products to existing markets, and must be accompanied by the consent in writing of such lessees to the change of use.

(d) *Approval of right-of-way.* The approval of such right-of-way shall be subject to the express conditions that the use of the pipeline for the transportation of oil, gas, or other similar products, shall be limited to such products produced in conformity with State and Federal laws, including laws prohibiting waste.

(e) *Pumping plant site.* A site for a pumping station or other structures reasonably necessary to the operation of a pipeline on a right-of-way approved under section 28 of the act of February 25, 1920, or as amended by the act of August 21, 1935, may be granted under the same sections (36 Op. Atty. Gen. 480). When an application is made for a right-of-way for a site, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act.

(Sec. 28, 49 Stat. 678, as amended; 30 U.S.C. 185)

§ 2234.5–2 Over lands subject to mineral lease.

(a) *Authority; applications.* (1) Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U.S.C. 186), provides in part:

(i) That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(ii) Where another statutory provision covers the type of right-of-way desired, applications shall be made in accordance with such statute and the applicable regulations.

(iii) Where there is no other statutory provision covering the type of right-of-way desired, applications shall be filed in accordance with §§ 2234.1–1 to 2234.1–6 inclusive.

(Sec. 32, 41 Stat. 450, R.S. 2478; 30 U.S.C. 189, 43 U.S.C. 1201)

§ 2234.5–3 For pipe lines on the Outer Continental Shelf (Act of August 7, 1953).

(a) *Purpose and authority.* (1) Section 5(c) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 464), authorizes the Secretary of the Interior to grant rights-of-way for pipeline purposes for the transportation of oil and gas. The purpose of the regulations in this part is to set forth the rules governing the granting and administration of such rights-of-way. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands or to rights-of-way thereon are applicable to the submerged lands of the Outer Continental Shelf.

(2) Compliance with the regulations of this part does not obviate the necessity of compliance with requirements and regulations of the Department of the Army and the Coast Guard with respect to prevention of obstruction to navigation, lights, and warning devices, and other matters relating to safety of life and property, as authorized by section 4 of the act.

(b) *Definitions.* (1) "Secretary" means Secretary of the Interior.

(2) "Director" means Director, Bureau of Land Management.

(3) "Manager" means the officer in charge of the local office of the Bureau of Land Management.

(4) "Right-of-way" includes the site on which the pipe line and associated structures are situated which shall not exceed 200 feet in width for pipe lines and be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage, or treating of the production from a lease or leases. The construction of gathering lines may be approved by the Oil and Gas Supervisor in accordance with the provisions of 30 CFR 250.18 and 250.68.

(c) *Procedures*—(1) *Application*—(i) *Form and requirements.* No special form of application is required. The application should be filed in duplicate and should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the act and these regulations and that applicant agrees that the right-of-way if approved will be subject to the terms and conditions of the regulations in this part. It should also state the

primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the office of the Manager. If the right-of-way has been utilized prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date applicant obtained control of the improvements. A filing fee of $10 and the rental required herein under subparagraph (4)(v) of this paragraph, must accompany the application.

(ii) *Map showing survey.* Each copy of the application must be accompanied by a map , showing the center line of the right-of-way, properly identified so that the right-of-way may be accurately located by a competent engineer. The map should comply with the following requirements:

(*a*) The scale shall be at least 1:160,000.

(*b*) Courses and distances of the center line of the right-of-way shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(*c*) The total distance and width of the right-of-way shall be given, and the diameter of the pipe line specified.

(*d*) The initial and terminal points of the right-of-way shall be accurately located by latitude and longitude or by grid references.

(*e*) Each copy of the map shall bear upon its face a statement of the engineer who made the map that the right-of-way is accurately represented upon the map.

(2) *Persons qualified to acquire and hold rights-of-way.* (i) Applications may be filed by citizens of the United States, associations of such citizens, and by corporations organized under the laws of the United States or of any State or Territory thereof.

(ii) An individual and each member of an association applying for a right-of-way must state in the application whether he is a native-born or naturalized citizen of the United States.

(iii) (*a*) A private corporation must file a certified copy of its charter or articles of incorporation.

(*b*) A corporation other than a private one must file a copy of the law under which it was organized and proof of its organization..

(*c*) A copy of the resolution or by-laws of the corporation authorizing the filing of the application or a certificate of the Secretary or an assistant Secretary of the corporation under the corporate seal certifying that the officer executing the application has authority to do so, must be filed. If the application is filed by an attorney-in-fact a certified copy of the resolution of the Board of Directors authorizing his appointment and an executed copy of the power of attorney must be filed.

(*d*) If the corporation has previously filed any or all of the papers required in (*a*), (*b*), and (*c*) of this subdivision, specific reference to such filing giving date, place, and case number will be accepted as full compliance with such requirements.

(3) *Consent of or notice to lessee or right-of-way holder of area crossed or invaded by right-of-way.* An applicant must show the extent to which the right-of-way applied for invades or crosses mineral leases or rights-of-way other than his own and must submit with his application either the written consent of each lessee or right-of-way holder whose lease or right-of-way is so affected or a statement that he has delivered to each lessee or right-of-way holder whose lease or right-of-way is so affected personally or by registered or certified mail a copy of the application and map. If the statement is filed no final action will be taken on the right-of-way application until 15 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to file protests against granting of the right-of-way.

(4) *Terms and conditions.* An applicant by accepting a right-of-way grant, agrees and consents to comply with and be bound by the following terms and conditions, accepting those which the Secretary may waive in a particular case:

(i) To comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf and the protection of correlative rights therein.

(ii) To pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and to indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way.

(iii) To keep the Director informed at all times of his address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision in all subcontracts.

(iv) That the allowance of the right-of-way shall be subject to the express condition that the rights granted will not prevent or interfere in any way with the management, administration of, or the granting either prior or subsequent to the right-of-way grant of other rights by the United States in the submerged lands affected thereby, and that he agrees and consents to the occupancy and use by the United States or its lessees or other right-of-way holders of any part of the right-of-way not actually occupied or necessarily incident to its use for any necessary operations involved in such management, administration or the enjoyment of such other granted rights.

(v) To pay for the first calendar year or fraction thereof, and thereafter annually in advance an annual rental of $5 for each mile or fraction thereof traversed by the right-of-way and $50 for each area applied for as the site for a pumping station or other accessory to the right-of-way. Payments required herein may be annual, for a 5-year period or for multiples of such period.

(vi) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Manager, he shall, so far as reasonably possible, restore the area of the right-of-way to its original condition.

(d) *Approval of right-of-way.* If the application and other required information are found to be in compliance with the law and regulations and the consents required by paragraph (c)(3) of this section have been obtained or any protests filed as therein provided have been rejected, the right-of-way will be granted. If the right-of-way as applied for would cross any area withdrawn from disposal or restricted from exploration and operation it will be rejected unless the Federal agency in charge of withdrawn or restricted area shall give its consent to the granting of the right-of-way, but in such case the applicant upon request filed within 30 days after receipt of the rejection notice will be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(e) *Term of grant.* Any right-of-way granted hereunder shall be for so long as the pipe line is maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Cessation of use temporarily shall not terminate the grant, but if the purpose of the grant ceases to exist or use of the pipe line is permanently discontinued for any reason the grant shall be subject to forfeiture.

(f) *Construction*—(1) *Proof of construction.* Failure to construct the pipe line within 5 years from the date of the grant shall be deemed to be an abandonment of the grant which will be forfeited by an appropriate proceeding. Proof of construction shall be submitted to the Manager. Such proof shall consist of a statement by the holder of the right-of-way that the pipe line has been laid and is in operation. If there is any deviation from the right-of-way as shown on the original map, the unused portion of the grant must be relinquished and maps in duplicate of the location of the right-of-way as constructed, prepared in accordance with paragraph (c)(1) of this section must be furnished as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat will be at the risk of the right-of-way holder.

(2) *Advance permission to commence construction.* Upon a satisfactory showing of the need therefor, the Director may grant permission to commence construction of a pipe line in advance of any grant of the right-of-way but such permission is not a commitment that the right-of-way will be approved and all

work done thereunder prior to the granting of the right-of-way will be at the applicant's risk. No advance permission will be granted for an area or areas not subject to a right-of-way grant.

(g) *Assignment of right-of-way.* Assignment may be made of a right-of-way in whole or as to any lineal segment thereof after construction subject to the approval of the Manager. Any such assignment must be filed in duplicate accompanied by an application for approval in which the assignee must make the showing required by paragraph (c) (2) of this section and agree to the terms and conditions prescribed in paragraph (c) (4) of this section. No assignment shall be effective to transfer any rights until it is approved. A fee of $10 must accompany the application for the approval of an assignment.

(h) *Penalty for failure to comply.* As provided in the act, failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the application therefor and the survey, location and width thereof and upon the express condition that such oil or gas pipe lines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipe line in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things conservation and the prevention of waste, be grounds for forfeiture of the grant in an appropriate, judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 4(b) of the act. Upon relinquishment of any right-of-way or forfeiture of the grant, the right-of-way owner will be required to remove his improvements within one year from the effective date of such relinquishment or forfeiture unless otherwise provided by law or in the decree of forfeiture.

(Sec. 5, 67 Stat. 464; 43 U.S.C. 1334)

§ 2234.6 Through national forests (Act of February 1, 1905).

§ 2234.6–1 Authority.

Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 524), grants rights-of-way through national forests to citizens and corporations of the United States, for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2234.6–2 When construction may commence.

No construction will be allowed in national forests until an application for right-of-way has been regularly filed in accordance with §§ 2234.4–1 to 2234.1–5 and this § 2234.6 and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

(Dec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2234.6–3 Water plant structures.

When application is made for a right-of-way for water plants, § 2234.4–1(b) (3) should be followed, with appropriate changes in the prescribed forms.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2234.6–4 Procedure when unsurveyed land is involved.

Maps showing reservoirs, canals, water plants, and other structures wholly upon unsurveyed lands, will be received and acted upon in the manner prescribed for surveyed lands.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

APPENDIX A

FORMS FOR DUE PROOFS, AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY]

_____ *of the*
(_____ *Company*)

(Form 2)

STATE OF _____
County of _____, *ss:*

I, _____ do certify that I am the president of the _____ company, and that the following is a true list of the officers of the said company, with the full name and official designation of such, to wit: (here insert the full name and official designation of each officer.)

[SEAL OF COMPANY]

_____
(*President of Company*)

(Form 3)

STATE OF _____
County of _____, *ss:*

_____, Being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said company's line of railroad described as follows: (here describe the line of route as required by section 10), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; and that the survey of the said line is accurately represented on this map and by the accompanying field notes.

_____

Sworn and subscribed to before me this _____ day of _____ 19__.

[SEAL]

_____
(*Notary Public*)

(Form 4)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said railroad, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the _____ day of _____, 19__, as the definite location of the said railroad described as follows: (describe as in Form 3); and that this map has been prepared to be filed in order to obtain the benefits of the act of Congress approved March 8, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States." I further certify that the said railroad is to be operated as a common carrier of passengers and freight.

_____
(*President of the _____ Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

(Form 5)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct) the railroad of the _____ company; that said railroad has been constructed under his supervision as follows: (describe as in section 10), a total length of -- miles; that construction was commenced on the _____ day of _____, 19__, and completed on the _____ day of _____, 19__; and that the constructed railroad conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19__.

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL]

_____
(*Notary Public*)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company; that the railroad described as follows: (describe as in Form 5) was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the premises); that the location of the constructed railroad conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19__; and that the company has in all things complied with the requirements of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____
(*President of the _____ Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

(Form 7)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by section 10) an area of __ acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19—; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the __ mile to the __ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL] _____
(*Notary Public*)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of __ acres, and no more, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for station grounds; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the _____ mile to the _____ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

[SEAL OF COMPANY]
Attest:

_____
(*President of the _____ Company*)

_____
(*Secretary*)

APPENDIX B

Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act invoked, and to the nature of the project.

FORM

Reference should be made to the appropriate section of the regulations to determine when each of the forms is required.

Forms Nos. 2, 4, 6, 7, 9, and 10 may be signed by any officer or employee of the company who is authorized to sign them. However, if they are executed by a person other than the President, they must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See § 1813.2–2.

ENGINEER'S STATEMENT

(Form 1)

_____ states he is by
(Name of engineer)
occupation a _____ employed by the _____ to
(Type of engineer) (Company)
make the survey of the _____,
(Kind of works)
as described and shown on this map; that the survey of said works was made by him (or under his supervision) and under authority, commencing on the _____ day of _____ 19 _____, and ending on the _____ day of _____ 19__; and that such survey is accurately represented upon this map.

_____
(Engineer)

APPLICANT'S CERTIFICATE

(Form 2)

This is to certify that _____
(Engineer)
who subscribed the statement hereon is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of _____; and I further certify that the
(Cite statute)
right-of-way herein described is desired for _____.
(State purpose)

[SEAL] _____
(Signature of applicant)

_____
(Title)

_____
(Company)

Attest:

_____

FORMS FOR PLANT SITES ONLY

See §§ 2234.4–1(b)(3) and 2234.5–1(e).

(Form 3)

_____ states that
(Name of engineer)
he is the chief engineer of (or the person employed by) the _____,
(Company)
under whose supervision the survey was made of the grounds selected by the company for structures for a plant site under the act of Congress approved February 15, 1901 (February 1, 1905, act of March 4, 1911, as amended, or act of February 25, 1920, as amended), said grounds (here describe as required by regulation, sec. 244.31); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said Act.

_____
(Signature of engineer)

(Form 4)

I, _____, do hereby certify
(Applicant) (Company officer)
that I am the _____ of the _____
(Title)
_____; that the survey of the struc-
(Company)
tures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of _____, its chief engineer (or person employed in the premises), whose statement precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here described as required by regulation, sec. 244.30), for plant site under the act of Congress approved February 15, 1901 (February 1, 1905, March 4, 1911, as amended, or February 25, 1920, as amended); and that the company, by resolution of its board of directors, passed on the _____ day of _____ 19____, directed the proper officers to present the said drawing for approval in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act.

[SEAL] _____
(Signature of applicant)

_____
(Title)

_____
(Company)

Attest:

_____

FORMS FOR PROOF OF CONSTRUCTION

See section 244.15.

(Form 5)

_____ states that he is
(Name of engineer)
the chief engineer (or was employed to supervise or check the construction of the canals, ditches, laterals, and reservoirs) for the _____; that said (canals,
(Company)
ditches, laterals, and reservoirs) have been constructed under his supervision; that construction was commenced on the _____ day of _____ 19____, and completed on the _____ day of _____ 19____; that the constructed (canals, ditches, laterals, and reservoirs) as aforesaid, conform to the map which received the approval of the Department of the Interior on the _____ day of _____ 19____.

_____
(Signature of engineer)

(Form 6)

I, _____ certify
(Applicant) (Company officer)
that I am the _____ of the _____;
(Title) (Company)
that the (canals, ditches, laterals, and reservoirs) were actually constructed as set forth in the accompanying statement of _____, chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map approved by the Department of the Interior on the _____ day of _____ 19____; and that the company has in all things complied with the requirements of the act of (March 3, 1891) granting rights-of-way for (canals, ditches, laterals, and reservoirs) through public lands of the United States.

[SEAL] _____
(Signature of applicant)

_____
(Title)

_____
(Company)

Attest:

_____

FORMS FOR RESERVOIR DECLARATORY STATEMENT

(Form 7)

See § 2234.3–2(b) (1).
Res. D. S.
No. _____

Land Office at _____,
_____ 19__.

I, _____,
(Applicant) (Company officer)
of _____,
(Post office address)
do hereby certify that I am _____
(Title)
of the _____, and on behalf of
(Company)
said company, and under its authority, do hereby apply for the reservation of land in _____ county, State of _____, for the construction and use of a reservoir for furnishing water for livestock under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952). The location of said reservoir and of the land necessary for its use, is as follows: _____[1] of section _____ in township _____ of range _____ M., containing _____ acres.

To the best of my knowledge and belief the said land is not occupied or otherwise claimed, and is not mineral or otherwise reserved. The said reservoir is to be used in connection with_____.[2]
(Business of applicant)

The land owned or claimed by the applicant within the vicinity (within 8 miles) of the said reservoir is as follows:

_____
_____
(Describe by legal subdivision, section, township, and range)

No part of the land to be reserved under this application is or will be fenced unless written permission is first obtained from the Department of the Interior; the same will be kept open to the free use of any person desiring to water animals of any kind; the land will not be used for any purpose except the watering of stock; and the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

The water of said reservoir will cover an area of _____ acres in _____ of section _____ in township _____, of range _____ of said lands; the capacity of the reservoir will be _____ gallons, and the dam will be _____ feet high. The source of the water for said reservoir is _____
(Type and location _____, and there are of spring, stream, runoff, etc.)
no streams or springs within 2 miles of the land to be reserved except as follows:

_____
(Insert names or other identification)

The applicant has filed no other declaratory statements under this act, except as follows:

No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
Total, _____ acres, of which Nos. _____ _____ are located in said county.

It is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

Land Office at _____

I, _____, manager of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

Fees, $_____ paid.

_____
(Manager)

---

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

[2] Statement of business should include full information concerning the extent to which applicant is engaged in grazing, breeding, driving, or transporting livestock; the number and kinds of such stock; the place where they are being breed or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

(Form 8)

See § 2234.3–2(d).

_____ says that he is the
(Chief engineer)
person who was employed to make the survey of a reservoir covering an area of _____ acres, the initial point of the survey being _____, said
(Described as required by § 2234.3–2(d))
reservoir having been constructed upon the _____[1] of section _____, township _____, range _____ M., as proposed by reservoir declaratory statement No. _____, which was filed in the local land office at _____, under the provisions of the
(City)
act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952), that the said survey was made on the _____ day of _____ 19____, that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of _____ gallons of water.

_____
(Signature of engineer)

(Form 9)

See § 2234.3–2(d).

I, _____, do
(Applicant) (Company officer)
hereby certify that I am the _____
(Title)
of the _____ which filed (or
(Company)
that I am the person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the proposed reservoir has been constructed upon the _____[1] of section _____ township _____, range _____ M., covering an area of _____ acres; that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purposes and in the manner prescribed by the said act of January, provisions of which have been and will be complied with in all respects.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

(Form 10)

See § 2234.3–2(e) (2).

_____ says
(Applicant) (Company officer)
that he is the _____ of the _____
(Title)
_____ which filed (or that he is the
(Company)
person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the reservoir con-
(City)
structed in pursuance thereof, as heretofore certified has been kept in repair; that water has been kept therein to the extent of not less than _____ gallons during the entire calendar year of 19____; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said year; and that the said company (or person) has in all respects complied with the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952).

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

APPENDIX C

FORMS FOR DUE PROOFS AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS, TRAMWAYS, WAGON ROADS, ETC.

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior under the act of May 14, 1898 (30 Stat. 409), is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY] _____
(_____ of the _____ Company)

(Form 2)

STATE OF _____,
County of _____, *ss:*

I, _____, do certify that I am the president of the _____ Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each to wit: (Here insert the full name and official designation of each officer).

[SEAL OF COMPANY] _____
(President of Company)

(Form 3)

STATE OF _____
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said company's line of (railroad, tramway, or wagon road) described as follows: (Here describe the line of route as required by paragraph

12), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said land is accurately represented on this map and by the accompanying field notes; and that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map. (In the case of a tramway or wagon road, add the following: The said line of road does not lie upon nor cross any road or trail in common use for public travel except as shown on this map.)

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL]

_____

(Notary Public)

(Form 4)

I, _____ do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (railroad, tramway, or wagon road), as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (railroad, tramway, or wagon road) upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the _____ day of _____, 19__, as the definite location of the said (railroad, tramway, or wagon road) described as follows: (Describe as in Form 3); that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map, and that this map has been prepared to be filed in order to obtain the benefits of sections 2 to 9, inclusive, of the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes." [2] I further certify that the said (railroad or tramway) is to be used as a common carrier of freight and passengers.

_____

(President of the _____ Company)

_____

(Secretary)

ATTEST:

[SEAL OF COMPANY]

[2] The last sentence to be omitted from applications for wagon-road right of way.

(Form 5)

STATE OF _____,

County of _____, ss:

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct the railroad, tramway, or wagon road of) the _____ company; that said (railroad, tramway, or wagon road) has been constructed under his supervision, as follows: (describe as in paragraph 12) a total length of _____ miles; that construction was commenced on the _____ day of _____, 19__, and completed on the _____ day of _____, 19__; that the constructed (railroad, tramway, or wagon road) conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19__.

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL]

_____

(Notary Public)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company, that the (railroad, tramway, or wagon road) described as follows: (describe as in Form 5), was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the process); that the location of the constructed (railroad, tramway, or wagon road) conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19__, and that the company has in all things complied with the requirements of sections 2 to 9, inclusive of the act of Congress approved May 24, 1808, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."

_____

(President of the _____ Company)

_____

(Secretary)

Attest:

[SEAL OF COMPANY]

(Form 7)

STATE OF _____,

County of _____, ss:

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by paragraph 12) an area of _____ acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ mile to the _____ mile, for which this selection is made); [b] that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map, and that to the best of my knowledge and belief there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL]

_____

(Notary Public)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of _____ acres, and no more, was made by him as chief engineer of (or as surveyor employed to make the survey by) the said company; that the said survey, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for (station, terminal, or junction grounds); [1] (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ miles to the _____ mile, for which this selection is made); that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map; and that, to the best of my knowledge and belief, there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____

(President of the _____ Company)

Attest:

[SEAL OF COMPANY]

_____

(Secretary)

[b] This clause is to be omitted in applications for terminal or junction grounds.

Subpart 2235—Leases

§ 2235.1 Airport.

§ 2235.1–1 Airport and aviation fields—act of May 24, 1928.

(a) *Authority.* The act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended by the act of August 16, 1941 (55 Stat. 621), authorizes the Secretary of the Interior in his discretion and under such regulations as he may prescribe, to lease for use as a public airport, any contiguous, unreserved and unappropriated public lands, not to exceed 2,560 acres in area. It also authorizes him to grant permission for the establishment of beacon lights and other air navigation facilities, except terminal airports, upon unreserved and unappropriated public lands and to withdraw such lands for such purposes.

(b) *Lands which may be leased.* Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the act of May 24, 1928.

(c) *Prior valid rights.* All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

(d) *Applications for lease.* (1) Applications should be filed in accordance with the provisions of § 1821.2 of this chapter.

(2) Applications will be limited to citizens of the United States or associations of such citizens; to corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities.

(3) No specific form of application is required, and no blanks will be furnished; but the application, which must be signed by the applicant, but need not

be under oath, should include in substance the following points:

(i) Applicant's name and post office address.

(ii) If a corporation, a certified copy of the articles of incorporation.

(iii) If a city or town, evidence of authority of the mayor or other officer who may be authorized to execute such lease.

(iv) Description of the land for which the lease is desired, by legal subdivisions if surveyed, or by metes and bounds if unsurveyed.

(4) All applications filed by individuals, associations and corporations must be accompanied by an application service fee of $10 which will not be returnable. No application service fee will be required of a municipality or a corporation which is an instrumentality of the United States, or a State or Territory thereof.

(e) *Report by Administrator, Federal Aviation Agency; execution of lease.* Upon receipt of the application one copy will be referred to the Administrator, Federal Aviation Agency, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Federal Aviation Agency, has reported, a lease on a form approved by the Director will be prepared and sent to the applicant for execution.

(f) *Report by lessee.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Federal Aviation Agency, and file a report thereof in the land office.

(g) *Inspection by Federal Aviation Agency; report.* At any time during the term of the lease the Administrator, Federal Aviation Agency, may have an inspection made of the airport, and if it does not comply with the ratings set by the Federal Aviation Agency that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

(h) *Cancellation of lease.* The authorized officer may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Federal Aviation Agency, or shall fail to comply with the regulations in this part or the terms of the lease.

(i) *Period of lease; renewal.* Leases under the act of May 24, 1928, shall be for a period not to exceed 20 years and may be renewed for like period.

(j) *Annual rental.* Every lessee under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended August 16, 1941 (55 Stat. 621), shall pay to the lessor an annual rental of not less than $10 for an area not exceeding 640 acres, and not less than $5 for each additional 640 acres or fraction thereof. The rental terms of each lease shall be subject to reconsideration and revision at 3-year intervals. The lessee shall be required to submit a report to the Bureau of Land Management, showing the facts as to the gross receipts within 90 days after each anniversary date of the lease. In the event the average annual gross receipts reported during any such interval from operations on the leased land, from all sources, exceed $5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the authorized officer, but not exceeding 1 percent of such average. Due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained. The first annual rental payment shall be made when the application is filed in the land office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

(k) *Use of airport by Government departments and agencies; control for military purposes.* The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Bureau of Land Management, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airports.

(l) *Regulations governing use of the airport.* The lessee will submit to the Administrator, Federal Aviation Agency, for his approval, regulations to govern the use of the airport.

(m) *Beacon lights.* Government departments and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed by § 2235.1–1(a), except no rental will be charged. They will be withdrawn by the Bureau of Land Management, for that purpose on a sufficient showing of the necessity of a withdrawal for such purpose. However, to insure uniformity and centralized control over such facilities, all such applications will be referred to the Administrator, Federal Aviation Agency, for consideration and comment.

(n) *Segregation of land; withdrawals*—(1) *By the Bureau of Land Management.* While an application for a lease of not exceeding 2,560 acres of public lands for a public aviation field under sections 1, 2, and 3 of the act of May 24, 1928 (45 Stat. 728, 729; 49 U.S.C. 211–213), will operate as a segregation of the lands described therein from the time such application is filed in the proper land office, no authority is given the Bureau to withdraw public lands for terminal airports. The Bureau may, however, withdraw such lands for beacon lights or other air navigation purposes, including emergency or intermediate landing fields between terminal airports. Such withdrawals may be made on his own motion or at the instance of the Federal Aviation Agency or other Federal agencies, or lessees of terminal airports, or the applicants for such leases.

(2) *By public land order.* Prior to the approval of the act of May 24, 1928, public lands were subject to withdrawal by the President for public purposes, and the authority of the President to make such withdrawals is in no manner restricted by the act of May 24, 1928. Where, therefore, unappropriated public lands are desired by the Federal Aviation Agency or other Federal agencies for airport terminals, requests for their withdrawal by a public land order may be submitted to the appropriate Land Office of the Bureau of Land Management, for consideration. All requests for withdrawal should specifically state whether the area is desired for beacon lights, emergency or intermediate landing fields, or terminal airports.

(R.S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U.S.C. 1201, 49 U.S.C. 211)

§ 2235.1–2 Use by public agencies—Federal Airport Act of May 13, 1946.

NOTE: The regulations of the Federal Aviation Agency under this act are found in 14 CFR, Part 555.

(a) *Authority.* (1) Section 16 of the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1115) provides that whenever the Administrator of the Federal Aviation Agency determines that the use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project under the act, or for the operation of any public airport, he shall file with the head of the Department or agency having control of such lands a request that such property interest therein as he may deem necessary be conveyed to the public agency sponsoring the project in question or owning or controlling the airport.

(2) Upon receipt of the request from the Administrator of the Federal Aviation Agency, the head of the Department or agency having control of the lands in question is directed to determine whether the requested conveyance is inconsistent with the needs of the Department or agency and to notify the Administrator of his determination within a period of four months after receipt of the Administrator's request. Upon the determination of the head of the Department or agency that it is not so inconsistent, he is authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested.

(b) *Definitions.* As used in the regulations in this section unless the context requires otherwise, the following terms shall have the meaning indicated:

(1) "The act" means the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1101).

(2) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(3) "Director" means the Director of the Bureau of Land Management or his duly authorized representative.

(4) "Administrator" means the Administrator of the Federal Aviation Agency or his duly authorized representative.

(5) "Applicant" means any public agency as defined in 14 CFR 555.4, which, either individually or jointly with one or more other such public agencies, submits to the Administrator, an application requesting that public lands or interests therein, be transferred to such applicant under the Federal Airport Act.

(6) "Property interest" means the title to or any other interest in land or any easement through or other interest in air space.

(7) "Instrument of transfer" includes a patent, deed, lease or other instrument transferring a property interest.

(c) *Request by Administrator for transfer of property interest.* Each request by the Administrator in behalf of the applicant for the transfer of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior should be addressed to the Bureau of Land Management, should be in duplicate, and should contain the following:

(1) A copy of the application filed by the requesting public agency with the Administrator.

(2) A description of the land, if surveyed, by legal subdivisions, specifying section, township, and range. Unsurveyed land should be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie should be made to some prominent topographic feature and the approximate latitude and longtitude should be given when practicable.

(d) *Action on the request.* (1) The Secretary will determine whether the requested transfer is inconsistent with the needs of the Department or any agency thereof, and if it is not, the covenants, terms and conditions, if any, under which such transfer should be made. Any such conveyance will be made subject to valid existing rights of record, and to those disclosed as a result of posting, publication, or otherwise.

(2) Ordinarily where the lands involved are situated within a national park or monument or within an Indian reservation the transfer will not be authorized.

(e) *Publication and posting.* Before a transfer of fee title to public lands is made, the Bureau of Land Management will require the applicant to publish, at its own expense in a newspaper of general circulation in the county in which the land is situated, a notice stating that a request has been made by the Administrator on behalf of the applicant (giving its name and address) to acquire title to public lands (describing them) under the act, for the purpose of carrying out a project under the act, or for the operation of a public airport, as the case may be, and that the purpose of the notice is to give persons claiming an interest in the land or having bona fide objections to the proposed transfer an opportunity to file within 30 days after the date of the first publication, a protest, together with evidence that the protest has been served on the applicant. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue, if a weekly, in four consecutive issues, and if a semi-weekly or tri-weekly, in any of the issues on the same day each week for four consecutive weeks. The notice will also be posted during the entire period of publication in the land office, Bureau of Land Management, for the district in which the lands are situated, or if there is no land office for the State, in the office of the Director, Washington 25, D.C. No transfer will be made until proof of publication and posting of the notice has been filed.

(f) *Special provisions in the instrument of transfer.* Each instrument of transfer made hereunder of fee title or a lesser estate in the lands shall contain: The covenants, terms and conditions requested by the Administrator, as well as those required for the protection of the Department of the Interior or any agency thereof.

(R.S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U.S.C. 1201, 49 U.S.C. 211)

§ 2235.2 Fur farm.

§ 2235.2–1 Authority.

The act of July 3, 1926 (44 Stat. 821, 48 U.S.C. secs. 360, 361), authorizes the Secretary of the Interior to lease public lands on the mainland of or islands in Alaska, with the exception of the Pribilof Islands, for fur farming, for periods not exceeding ten years.

§ 2235.2–2 Policy.

(a) The authority to lease the public lands in Alaska for fur-farming purposes was granted in order to promote the development of the production of furs in Alaska.

(b) No lease for the purpose of raising beavers will be granted on any area already occupied by a beaver colony nor will any such lease be granted on streams or lakes where the activities of beavers may interfere with the run or spawning of salmon.

(c) In order to offer more people an opportunity to lease lands, and to avoid tying up large areas of land unnecessarily, fur-farming leases on public lands will not be granted for areas greater than are justified by the needs and experience of the applicant.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–3 Area subject to lease.

(a) *Acreage limitation and exceptions.* (1) On the mainland such leases may be for an area not exceeding 640 acres. A lease may cover an entire island, provided the area thereof does not exceed 30 square miles, and provided the need for such entire island is clearly established. Islands so close together that animals can cross from one to the other, and whose combined area does not exceed 30 square miles, will be treated as one island. Islands having an area of more than 30 square miles will be treated as mainland.

(2) Where a lease is granted for an area in excess of 640 acres on an island, the manager may, after notice to the lessee, reduce the area to an amount not less than 640 acres, if he determines that the lessee cannot reasonably use all of the area for which the lease was granted.

(b) *Lands subject to lease.* (1) Vacant, unreserved, and unappropriated public lands are subject to lease.

(2) Except for lands under the jurisdiction of the Fish and Wildlife Service and the National Park Service, public lands withdrawn or reserved for any purpose are subject to lease, if the department or agency having jurisdiction thereof consents to the issuance of the lease.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–4 Procedures; application, form of lease.

(a) *Qualifications of applicants.* Any person who is a citizen of the United States, or any group or association composed of such persons, or any corporation organized under the laws of the United States, or of any State or Territory thereof, authorized to conduct business in Alaska may file an application.

(b) *Contents of application.* An application for lease should be filed in duplicate in the proper land office. No specific form of application is required, but the application should contain or be accompanied by the following:

(1) Applicant's full name, post office address, the general nature of his present business, and the principal place of business.

(2) (i) A statement of the age and of the citizenship status, whether native-born or naturalized, of the applicant, if an individual, or of each partner or member of a partnership or association. A copartnership or an association applicant shall file a copy of whatever written articles of association its members have executed.

(ii) A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in Alaska, and a copy of the corporate minutes or resolutions authorizing the filing of the application and the execution of the lease.

(3) Description of the land for which the lease is desired, by legal subdivision, section, township, and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(4) A statement as to the applicant's experience in and knowledge of fur farming.

(5) A statement as to the kind of fur-bearing animals to be raised, and, if foxes, the color type; the number of fur-bearing animals the applicant proposes to have on the leased land within one year from the date of the lease, and whether it is proposed to purchase or

trap the stock; and that before commencing operations of any lease which may be issued, the applicant will procure from the appropriate State game agency whatever licenses are required under Alaska law.

(6) A detailed statement of the reasons for the need for any area in excess of 640 acres but not exceeding 30 square miles, when the land applied for is comprised of an island, or islands.

(7) A statement of the nature and results of the investigation made by applicant as to whether the land and climate are suited to raising the kind of animals proposed to be stocked.

(8) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others; and, if so, the nature of the use and occupancy and the improvements thereon, if any.

(9) If beavers are to be raised, a statement as to whether a beaver colony exists on the land, and whether salmon streams or lakes are on or adjacent to the land proposed to be leased.

(10) A statement that the applicant is acting solely on his own account and not under any agreement or understanding with another.

(11) The serial numbers of all other applications filed or leases obtained under this act by applicant, or applicant's spouse or business associate, or in which applicant has a direct or indirect interest.

(12) The showing as to hot or medicinal springs required by § 2321.1–2(c) of this chapter.

(13) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Form of lease; rental and royalty; report of annual operations.* (1) Leases will be issued on a form approved by the Director.

(2) Prior to the issuance of a lease and annually thereafter, the lessee shall pay an advance rental of $5 per annum if the lease embraces 10 acres or less, a rental of $25 per annum if the leased area is more than 10 acres but not more than 640 acres, and a rental of $50 per annum if the leased area exceeds 640 acres.

(3) Within 60 days after the end of each lease year the lessee shall file with the land office a report on a form approved by the Director, in duplicate, showing his operations under the lease and his gross receipts thereunder from the sale of live animals and pelts for the preceding lease year. The lessee shall pay, at the time of filing the report, a royalty of 1 percent of such gross receipts deducting therefrom the amount of the advance rental payment made for such preceding lease year.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–5 Assignments and subleases.

A proposed assignment on a lease, in whole or in part, or a sublease, must be filed in duplicate with the land office within 90 days from the date of its execution; must contain all of the terms and conditions agreed upon by the parties thereto; and must be supported by a statement that the assignee or sublessee agrees to be bound by the provisions of the lease. The assignee or sublessee must submit with the assignment or sublease the information or statements required by § 2235.2–4(b) (1), (2), (4), (5), (10), and (11). No assignment or sublease will be recognized unless and until approved by the manager.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–6 Renewal of leases.

Upon an application filed in the proper land office within 90 days preceding the expiration date of the lease, if it is determined that a renewal lease should be granted, the lessee will be offered such lease by the manager, upon such terms and conditions and for such duration as may be fixed, not exceeding 10 years. The filing of an application for renewal does not confer on the lessee any preference right to a renewal. The timely filing of an application will, however, authorize the exclusive fur-farming use of the lands by the lessee in accordance with the terms of the prior lease pending final action on the renewal application.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–7 Commencement of operations; stocking lands.

The lessee shall, within one year from the date of issuance of the lease, commence operations by taking possession of the leased area, and by placing thereon within that period such improvements as may be needed for such operations and as will show good faith, and shall thereafter develop the fur-farming enterprise on the leased area with reasonable diligence. The lessee shall stock the leased area with the minimum of fur-bearing animals required by the lease within the periods specified in the lease.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–8 Rights reserved; protection of improvements and roads.

Nothing in this part or any lease issued under this part shall interfere with or prevent:

(a) The prospecting, locating, development, entering, leasing, or patenting of mineral resources in the leased area under laws applicable thereto.

(b) The use and disposal of timber or other resources on or in the leased area under applicable laws.

(c) The use and occupation of parts of leased areas for the taking, preparing, manufacturing, or storing of fish or fish products, or the utilization of the lands for purposes of trade or business, to the extent and in the manner provided by law, and as authorized by the State Director.

(d) The acquisition or granting of rights-of-way or easements under applicable laws and regulations.

(e) Hunting and fishing under applicable Federal and State hunting and fishing laws and regulations, but the authorized officer may prohibit or restrict, or he may authorize the lessee to prohibit or restrict hunting or fishing on such parts of the leased area and for such periods as he may determine to be necessary in order to prevent any substantial interference with the purposes for which the lease is issued.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2235.2–9 Termination of lease, cancellation.

(a) *Action by manager.* (1) The manager may terminate a lease at the request of the lessee if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and that he has paid all charges due the Government thereunder.

(2) A lease may be canceled if the lessee shall fail to comply with any of the provisions of this part or of the lease, or shall devote the lease area primarily to any purpose other than the rearing of fur-bearing animals as authorized. No lease will be canceled until the lessee has been formally notified of such default and such default shall continue for 60 days after service of such notice.

(b) *Removal of improvements and personal property.* (1) Improvements or personal property may not be removed from the lands, except fur-bearing animals disposed of in the regular course of business, unless all moneys due the United States under the lease have been paid. The lessee shall be allowed 90 days from the date of expiration or termination of the lease within which to remove his personal property and such improvements as are not disposed of in the manner set forth in subparagraph (2) of this paragraph, which he has a right to remove; if not removed or otherwise disposed of within the said period, such improvements or personal property shall become the property of the United States.

(2) Upon the expiration of the lease or the earlier termination thereof, the manager may, in his discretion and upon a written petition filed by the lessee within 30 days from the date of such expiration or termination, require the subsequent lease applicant, prior to the execution of a new lease, to agree to compensate the lessee for any improvements of a permanent nature that he may have placed upon the leased area for fur-farming purposes during the period of the lease. If the interested parties are unable to reach an agreement as to the amount of compensation, the amount shall be fixed by the manager. All such agreements to be effective, must be approved by the manager. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for cancellation of the lease.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

Subpart 2236—Permits

AUTHORITY: The provisions of this Subpart 2236 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2236.0–2 Objectives.

(a) *Use of lands.* (1) It is the policy of the Secretary of the Interior, in the administration of the public lands within or outside of grazing districts, to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by the existing public land laws. Permits for such special use will not be issued, however, in any case where the

provisions of the existing public land laws may be invoked. For example, they will not be issued to authorize the use of the public lands for home, cabin, camp, health, convalescent, recreational, or business sites for which leases may be issued under the act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), or for the development of minerals, or for the securing of rights-of-way obtainable under existing laws, or for any use directly or indirectly relating to grazing.

(2) The contemplated use must not be in conflict with any Federal or State laws.

(3) An applicant must state in his application the use to which he intends to put the lands and he will not be permitted to devote them to any other use, unless he secures an additional permit.

(b) *Advertising displays.* No permit for erection and maintenance of advertising displays on public lands adjacent to the National System of Interstate and Defense Highways (23 U.S.C.) will be issued under the regulations of this part, except in conformity with, and subject to, the national standards prepared and promulgated by the Secretary of Commerce. No permit for erection and maintenance of advertising displays on public lands adjacent to any other highway will be issued under the regulations of this part if the proposed display would not conform with the standards or policies established by the appropriate State or local governmental entities which have authority to establish such standards or policies. Where the authorized officer finds that established standards or policies are insufficient in connection with any application for permit under the regulation of this part adequately to promote the safety, convenience, and enjoyment of public travel, to protect the public investment in the highway or in the adjacent public lands, to preserve for the public significant scenic or other recreational values in the public lands, or otherwise to protect the public interest, he shall establish such additional standards as he may deem appropriate in the circumstances, giving due consideration to the need for directional and other official signs; the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof; and the interest of the traveling public in, and its need for, specific types of information.

§ 2236.0–3 Authority.

Authority to issue special land-use permits for public lands within or outside of grazing districts for purposes other than grazing is found in R.S. 453 (43 U.S.C. 2), which provides that the Director, Bureau of Land Management, shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise regarding such public lands.

§ 2236.0–5 Definitions.

(a) The words "advertising displays," as used in the regulations of this part, mean any signs, displays, or devices erected or maintained for outdoor advertising or for outdoor public information purposes, except signs erected and maintained by Federal, State, or local highway authorities within highway rights-of-way.

(b) The word "highway" in the regulations of this part is used in its general sense to include all routes of public surface travel.

§ 2236.0–6 Qualifications of applicants.

Any person, over 21 years of age, who is a citizen of the United States, or who has declared his intention to become a citizen, or any group or association composed of such persons, or any corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in the State in which the land involved is situated, or any agency of the Federal Government, or any State or political subdivision thereof, may file such application.

§ 2236.0–7 Availability of land.

(a) *Permit area.* A special land-use permit will not be issued for more than 5 acres, except upon a showing of special need, satisfactory to the authorized officer. The land must be vacant public land, or public land withdrawn or reserved under authority of the Secretary of the Interior, surveyed or unsurveyed. If surveyed, the land must be described in the application by legal subdivisions of the public land surveys. The smallest legal subdivision in a quarter-quarter section or fractional lot that will be considered is 2½ acres. Where, however, a fractional lot contains less than 2½ acres, a permit may be issued for the entire lot. If unsurveyed, the land must be described by metes and bounds, with substantial monuments at each corner and with a tie to a nearby corner of the public land surveys, if feasible. If such tie is not feasible, the location must be otherwise identified with certainty, preferably with reference to prominent topographic or cultural features. The land must be taken in rectangular form if at all practicable.

(b) *Land nonsegregated.* A special land-use permit will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, as follows:

(1) Applications and selections may be made under nonmineral laws, subject to the revocation of the permit.

(2) The mineral contents in the land shall at all times be subject to prospecting, location, developing, mining, entering, leasing, or patenting under the provisions of the applicable general mining laws or mineral leasing laws.

(3) The special land-use permit shall be subject to any permit issued under the act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), to explore for objects of antiquity on the public lands.

(4) The special land-use permit shall not restrict the acquisition by grant or permit of rights-of-way under existing laws.

§ 2236.1 Procedures.

§ 2236.1–1 Applications.

(a) *General.* Applications must be executed in duplicate on a form approved by the Director. The application must be filed in accordance with the provisions of § 1821.2 of this chapter. Application for O & C land in Oregon shall be filed in the appropriate district office.

(b) *For advertising displays.* Applications for special land use permits must be executed in duplicate on a form approved by the Director. Each application must contain a sufficient recital of the facts relative to the advertising display, including its size, and lighting effect, if any, to enable its substantial construction from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, must be furnished. The application must identify the highway along which it is proposed to erect the display and must give the distance and direction of the site, measured by highway travel to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description must be given in terms of the public land surveys. If the land is unsurveyed, the description must be sufficiently complete to identify its location and boundaries. The application may be filed with the officer in charge of any local office of the Bureau of Land Management having jurisdiction over the lands.

§ 2236.1–2 Fees.

(a) All applications for special land use permits or renewal thereof, where the applicant is an individual, corporation or association, must be accompanied by an application service fee of $10 which will not be returnable. No charges will be made for applications by agencies of the Federal Government, or agencies of the States and political subdivisions thereof.

(b) All applications for special land use permits for erection and maintenance of advertising displays or renewal thereof, where the applicant is an individual, corporation, or association, must be accompanied by an application service fee of $10 which will not be returnable. No charge will be made for applications by agencies of the Federal Government, or agencies of the States and political subdivisions thereof.

§ 2236.2 Permits and renewals.

§ 2236.2–1 Terms; renewal—general.

A special land-use permit may be issued for a period of not exceeding 5 years and will be revocable for any breach of condition thereof. It also will be revocable in the discretion of the authorized officer, at any time, upon notice, if in his judgment the lands should be devoted to another use. Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will be considered the preferred applicant for a new permit under regulations then in force, provided no superior claim to the land has been asserted in the meantime.

§ 2236.2–2 Special stipulations.

It is found that unusual conditions or the protection of the public interests require the insertion of special stipulations in the permit, the applicant will be advised thereof prior to its issuance.

§ 2236.2–3 Advertising displays.

(a) Special land-use permits to erect and maintain advertising displays on the public lands will be issued on a form approved by the Director, in his discretion, for such period as he may deem reasonable in the circumstances. The permits will be revocable in the discretion of the authorized officer at any time.

(b) A permit may be renewed, in the discretion of the authorized officer, upon the filing of an application for renewal prior to its expiration. Renewal, if granted, will be in the form of a new permit.

§ 2236.3 Rental charges.

§ 2236.3–1 General.

(a) Each permittee will be required to pay to the Bureau of Land Management, in advance, the annual rental fixed by the permit, which shall be based upon the value of the land for the use to which it is to be put. The annual rental may be adjusted from year to year, in the discretion of the authorized officer. In no case, however, will the minimum rental charge be fixed at less than $5 per annum.

(b) Special land-use permits applied for by agencies of the Federal Government and agencies of States and political subdivisions thereof may, in the discretion of the authorized officer, be issued without rental charge.

§ 2236.3–2 Advertising displays.

(a) The annual charges for advertising displays erected and maintained under permit by individuals, associations, and corporations, other than nonprofit organizations, shall be the annual fair rental value of the privilege. The annual charges for advertising displays erected and maintained under permit by State and local governments and their instrumentalities and by nonprofit organizations shall take into consideration the public purposes which the displays would serve. No annual charge will be made for advertising displays erected and maintained under permit by Federal agencies.

(b) The annual charges must be paid in advance for such periods as may be specified by the authorized officer. Where a permit is canceled before its expiration, a proportionate refund of the charges will be made.

§ 2236.3–3 Refund.

No refunds of rentals properly paid will be made because of the revocation of the permit at any time, or because of interference with or prevention of the exercise of the privileges conferred by the permit by mine of prospectors, locators, licensees, permittees, lessee, or patentees or by permitees under the act of June 8, 1936 (34 Stat. 225, 16 U.S.C. 431–498), or by grantees or permittees of rights-of-way under existing laws.

§ 2236.4 Rights of applicants and permittees.

§ 2236.4–1 Occupancy of land prior to permit.

An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit, or use thereafter except in accordance with the terms of the permit, is hereby prohibited.

§ 2236.4–2 Assignment of permit.

(a) A permittee will not be allowed to assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be supported by a statement signed by the assignee agreeing to be bound by the provisions of the permit if the assignment is approved, and a showing that the assignee possesses the qualifications set out in § 2236.0–6.

(b) All applications for assignment of special land use permits must be accompanied by an application service fee of $10 which will not be returnable.

§ 2236.4–3 Timber.

A special land-use permit will not entitle an applicant to cut and remove timber from the land. If he wishes to cut and remove the timber, application therefore must be made in accordance with the governing laws and regulations.

§ 2236.5 Removal of improvements.

The permittee, if all rental charges due the Government have been paid, may remove within such reasonable time as may be allowed by the authorized officer after the revocation or expiration of a permit, all structures which have been placed upon the premises by him or his assignor. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment, or upon revocation or expiration of the permit fails to remove the structures within the time required by the authorized officer, the structures will become the property of the United States.

§ 2236.6 Advertising displays.

§ 2236.6–1 Applicability of general regulations.

All the general provisions of the special land-use permit regulations of this part not inconsistent with the special provisions relating to permits for advertising displays are applicable to such permits.

§ 2236.6–2 Advertising displays on public lands without permission unauthorized.

The erection or maintenance on the public lands of advertising displays, without permission, is unauthorized. Any advertising displays erected or maintained on the public lands, except under authority and pursuant to the terms and conditions of a lease, permit, or easement issued by the authorized officer under applicable regulations (see also Part 9 of this title and Subpart 2232 of this chapter) shall be deemed to be in trespass (see Subpart 9239 of this chapter).

§ 2236.6–3 Identification of authorized advertising displays.

Each advertising display erected or maintained under a permit issued pursuant to the regulations of this part, must, for convenient identification, have the serial number of such permit marked or painted thereon.

PART 2240—SALES AND EXCHANGES

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Subpart 2241—Alaska Public Sales Act

AUTHORITY: The provisions of this Subpart 2241 issued under sec. 5, 68 Stat. 679; 48 U.S.C. 364e. Additional authority is cited to text in parentheses.

§ 2241.0–2 Objectives.

It is the policy of the Secretary to sell public lands under the act only when the lands will be put to some definite industrial or commercial use within a reasonable time after purchase according to the utilization program declared by the applicant or purchaser pursuant to §§ 2241.1–4 and 2241.5–1.

§ 2241.0–3 Authority.

The sale, at public auction, of tracts not exceeding 160 acres in the aggregate, which have been classified as suitable for industrial or commercial purposes, including construction of housing, is authorized by the act of August 30, 1949.

(Interprets or applies secs. 4, 5, 69 Stat. 444; 48 U.S.C. 462 note)

§ 2241.0–5 Definitions.

When used in this part:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Manager" means manager of the land office for the district in which the land is situated.

(d) "Applicant" or "purchaser" includes an individual, partnership, association of individuals, or a corporation, including municipal corporations.

(e) "The act" means the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U.S.C. 364a–364e).

§ 2241.0–7 Lands subject to sale.

(a) Any public lands, in Alaska not within national parks or monuments, national forests, Indian lands, or military

reservations, may be sold under the act, provided such lands shall first have been classified by the authorized officer of the Bureau of Land Management as suitable for disposal for industrial, commercial or housing use. The authorized officer may classify lands under the act either on his own motion or upon application.

(b) Disposal of withdrawn or reserved lands may be made only with the consent of the department or agency for whose use or in whose interest the lands were reserved or withdrawn, or which has administrative jurisdiction over such lands, and subject to the conditions required by such department or agency.

(c) Lands may be classified for disposal as industrial, commercial, or housing sites suitable for one or more types of enterprises, including, but not limited to, the following:

(1) Industrial site for manufacturing, fabricating, processing, or warehouse-storaging.

(2) Commercial site for merchandising, retail and wholesale, including warehouse and distribution centers; fur farms for penned animals; transportation facilities, including terminals, and repair shops.

(3) Housing site for apartments, detached and semi-detached dwellings on a project basis of sufficient size, but not less than five dwelling units, to warrant large-scale development; hotels, recreation resorts, overnight lodges, and motor courts.

§ 2241.1 Procedures.

§ 2241.1–1 Application.

(a) *Contents, execution, fees.* (1) An application to purchase public lands under the Act of August 30, 1949, which have not been classified for disposition under the act, may be filed with the appropriate land office by any qualified individual, association of individuals, or corporations, including municipal and public corporations. Each application must be accompanied by a petition for classification on a form approved by the Director.

(2) The application should be executed and filed in duplicate if the land is surveyed, or in triplicate if the land is unsurveyed. Each application should be for only one tract, reasonably compact in form, containing so much land, not exceeding 160 acres, as is actually required for the contemplated enterprise or project.

(3) Each application must be accompanied by an application service fee of $10 which will not be returnable, except that the application service fee shall be returned to the applicant where the application is allowed and the sale is held but the applicant is not the successful bidder. In such case, the successful bidder will be required to pay the $10 application service fee.

(4) An applicant may file any number of applications, but no award may be made nor may patent issue to any purchaser for land which, with other lands under this act then held by such purchaser, shall exceed 160 acres in the aggregate.

(5) The application should contain in substance the following information:

(i) Name and address of applicant; age; general nature of his business and principal place of business.

(ii) An association is required to file a certified copy of its articles of association and the same showing, including holdings of its members, as required of an individual as specified herein. A corporation is required to file a certified copy of its articles of incorporation and a showing that it is qualified to hold real estate in Alaska.

(iii) Description of the land desired, by legal subdivision, section, township and range, if surveyed, and by metes and bounds with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments. No patent may issue, however, until an official survey is made.

(iv) A brief but complete statement as to the use to which the land will be put, supplemented by the showings required in paragraph (b) of this section.

(v) A statement of the applicant's interests, direct or indirect, whether as a member of an association or stockholder in a corporation or otherwise, in lands covered by purchase certificates or patents issued under the act, with the acreage thereof, identifying the same by land office and serial or by patent number, and a statement that the total amount of such lands then held by the applicant, together with the lands applied for, do not exceed 160 acres in the aggregate.

(6) The application must be signed by the applicant or an attorney in fact; if executed by an attorney in fact it must be accompanied by the power of attorney. Application on behalf of corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto. When a municipal or public corporation is the applicant, the authority of the signing official or officials to act for the corporation must be furnished, evidenced by a certified copy of the resolution of its governing board or body.

(b) *Land utilization statement and plat.* (1) The application must be accompanied by an additional statement executed by the applicant disclosing in detail the proposed use to which the land will be put, containing in substance the following information: Type (whether industrial, commercial, or housing); structures and other improvements to be erected on the land, including size and cost of construction; approximate dates for beginning and completing construction; or, in the case of housing, the number of separate housing units or the number of persons or families for whom accommodations will be provided.

(2) The applicant must also furnish a plat of the area desired for puurchase, showing the proposed location of all structures, roadways, and other improvements and facilities to be erected, in sufficient detail to illustrate the contemplated utilization of the tract and the need for all the acreage for which application is made.

(c) *Effect of application; segregation of land.* (1) Subject to valid prior rights, the filing of an application in conformity with the regulations in this part will segregate the land applied for from application, entry, or settlement under any public-land laws or from mining locations except as provided in § 2241.5–2 pending classification of the land under the act.

(2) Subject to valid prior rights, the authorized officer may, at any time, on his own motion, effect a segregation of land, pending its classification as suitable for disposal under the act by filing with the manager of the land office a notice specifying each tract of land under consideration. The notice shall be effective to segregate the land from further application, entry or settlement under any public-land law, or from mining locations except as provided in § 2241.5–2.

The segregation notice shall be effective for not more than six months from date of filing of the notice in the land office, but the segregation may be extended for not more than an additional six months by the authorized officer, by filing a similar notice as to any or all of such tracts.

(3) An application or a segregation notice shall not prevent the filing of other applications under any public-land law without the initiation of any rights thereunder, pending classification of the land. Upon determination, pursuant to an application or notice, that the land is not suitable for disposal under the act or upon expiration of the segregation period or an extension thereof without classification, the land shall be subject to the public-land laws and pending applications thereunder.

§ 2241.1–2 Classification and appraisals.

(a) The authorized officer, based upon such reports and studies as may be necessary, will make a determination whether the land in the application or segregation notice is suitable for disposal for industrial or commercial purposes; he will also appraise the land at its fair market value.

(b) If the land is withdrawn or reserved on behalf of or is under the administrative jurisdiction of another department or agency, the consent of such department or agency to the disposal of the land must be obtained prior to classification, and such disposal will be subject to any necessary and proper conditions required by the head of the department or agency.

§ 2241.1–3 Notice: publication and posting.

(a) Upon a favorable classification of the land, the authorized officer will have a notice of the sale published, at the expense of the United States, not less than 30 days prior to the date fixed for the sale, in a designated newspaper of general circulation in Alaska. Publication may be made once a week for four consecutive weeks.

(b) The notice will contain the date, hour, and place of the sale; description of the tract or tracts, whether surveyed or unsurveyed; if unsurveyed, a statement that the land must be surveyed at the expense of the purchaser prior to patent, with the estimated cost of survey; type or types of use for which classified; the minimum acceptable bid price which shall be not less than the appraised value if the land is surveyed, or appraised value plus estimated cost of survey if the land is unsurveyed; a list of all reservations to which the land is subject, including reservation to the United States of all minerals in the land; and such other reservations, if any, as may be necessary and proper; where and how bids shall be submitted; and a statement warning all bidders against violation of the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) The manager will post a copy of the notice of sale in the land office during the entire period of publication.

§ 2241.1–4 Bidding and sale.

(a) The land will be offered for sale at public auction at a minimum price of not less than the appraised value, plus the estimated cost of any surveys required to properly describe the land prior to issuance of patent. Bids may be made by the principal or an agent either personally at the sale or by mail, in the manner specified in the notice of sale. Bids sent by mail will be considered only if received at the land office prior to the hour fixed for the sale. The bids must be enclosed in a sealed envelope and must be accompanied by a certified check, cashier's check, or money order payable to the Bureau of Land Management, for one-fifth the amount of the bid. The sealed envelope must be marked in the lower left-hand corner as prescribed in the notice of sale. The sealed envelopes, with the hour and date of receipt in the land office noted thereon, will be opened by the manager only at the time fixed for the sale.

(b) The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

§ 2241.1–5 Action at close of bidding; declaration of highest bidder.

(a) When all bids from the persons present shall have been received, the manager will, in the usual manner, declare the bidding closed. He will then announce the amount of the highest bid and require the offeror immediately to deposit one-fifth the amount of the bid. In the absence of such payment the manager will at once proceed with the sale, excluding that bid and starting with the next highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the manager will then and there hold a public drawing, in the manner specified in § 1821.2–3, of this chapter, from among such persons, and the bid of the person whose name is drawn will be accepted by the manager. The remainder of the bid must be paid by the bidder within 30 days after receipt of notice from the manager. When the full amount of the bid is paid, the managers will declare the offeror as the successful bidder, but no certificate of purchase will be issued unless and until the bidder has made satisfactory compliance with § 2241.2–1.

(b) If the remainder of the bid is not paid within the time allowed or the bidder fails to qualify in accordance with § 2241.2–1, the bid will be rejected and the one-fifth deposit will be forfeited; and an authorized officer may offer the land to the party who made the next highest bid, if such bidder is still interested in the purchase. Until the successful bidder has fully complied with § 2241.2–1, the authorized officer may at any time determine, in the public interest, that the land should not be sold, and the applicant or any bidder shall have no contractual or other rights as against the United States, and no action taken shall create any contractual or other obligation of the United States.

§ 2241.2 Certificate of purchase.

§ 2241.2–1 Statements required.

Before a certificate of purchase may issue, the successful bidder must, within 30 days after he shall have been so declared, file in the land office, if he has not already done so:

(a) A statement and evidence of his qualifications and holdings of lands under this act in conformity with § 2241.1–1(a) (1), (2) and (5).

(b) Acceptable showing as to the proposed program of use and development of the land, consistent with the general purpose for which classified, containing in substance the detailed information required by § 2241.1–1(b).

(c) A statement, accompanied by satisfactory proof, that he has the financial means or has made arrangements with an established financial institution to provide the means to carry the development program to completion; also a statement that the bid is not made for or on behalf of any undisclosed principal or other party in interest.

(d) In addition, the bidder may furnish or he may be required to furnish any additional information or showing, or proof of his bona fide intention and of his financial ability to develop the tract for the contemplated use. Any showing as to financial responsibility will, upon request of the bidder, be treated as confidential and not open to public inspection.

§ 2241.2–2 Issuance; rights and limitations; survey.

(a) When the authorized officer is satisfied that the successful bidder is qualified, that he has the intention and financial means to develop and use the land in accordance with the act and his proposed utilization program, the authorized officer will authorize the issuance by the manager of a certificate of purchase on a form approved by the Director, containing the reservations as listed in the published notice of sale.

(b) Upon issuance of the certificate which will be valid for a period of three years from the date of issuance, the purchaser shall have the right, during the three-year period, to enter upon, occupy, use, and make improvements upon the land in accordance with the declared utilization program.

(c) If the land is unsurveyed, the manager will, upon issuance of the certificate of purchase, have a survey made and plats prepared. Upon completion of the survey work, the purchaser will be required to pay any deficiency, or he will be refunded any amount paid in excess of the actual cost of survey.

(d) Timber on the land may not be cut or removed without the prior approval of an authorized officer. Approval will be granted for the removal of only so much of the timber and clearance of so much of the land as is directly necessary to the actual improvement and use of the land in accordance with the utilization program.

§ 2241.3 Assignment; mortgage or loan security.

(a) A certificate of purchase may be assigned in its entirety only. The proposed assignment must be filed in duplicate in the land office within 90 days after its date of execution, for the approval of the manager. The instrument must contain all the terms and conditions agreed upon by the parties thereto, including the consideration paid for the assignment, and must be accompanied by the same showing as to the assignee's qualifications, holding of lands under this act, proposed program for utilizing and developing the land, and financial ability to carry out the declared utilization program, as is required of the successful bidder in accordance with § 2241.2–1. An assignment will not be recognized unless approved by the manager; a patent, if issued, will be in the name of the approved assignee. Subleases are not authorized.

(b) A certificate of purchase may be pledged as security for a loan from a lending agency when the loan is made in furtherance of the purchaser's or certificate holder's land utilization program; the lending agency may ascertain from the manager the status of the land and other pertinent information concerning the certificate of purchase. In case the holder-borrower's improvements or his rights under the purchase certificate are lawfully acquired by the lending agency through foreclosure or otherwise, such agency, or any party who purchases the property or rights from such agency, if qualified in accordance with § 75.30, will, upon application, be recognized in lieu of the previous holder or purchaser and, upon compliance with the terms of the certificate of purchase, may apply for the issuance of a patent. If, in making a sale the lending agency takes back a mortgage on the property, the agency shall be entitled to the same consideration as in the case of the original loan. A lending agency which files proper notice with the manager that it has made a loan and accepted, as security therefor, a certificate of purchase or improvements

on the land, in conformity with the provisions of this paragraph, will be advised of any action taken affecting the status of the land.

§ 2241.4 Termination of certificate; removal of improvements.

(a) At the end of three years from the date of issuance, unless there is then pending an application for the issuance of a patent filed in accordance with § 2241.5–1 the certificate of purchase will be void and of no further effect, all rights thereunder will terminate; and no moneys paid thereon may be returned. No extension of time for compliance with the terms of the certificate of purchase can be granted.

(b) Thereupon the manager will allow the approved holder of the certificate of purchase 90 days from notice within which to remove from the land any materials, improvements, structures, or other property placed thereon. After the 90-day period or any extension thereof granted by the manager because of adverse climatic conditions or other sufficient cause, all such materials, improvements, structures, and property not removed will become the property of the United States.

§ 2241.5 Patent.

§ 2241.5–1 Application; proof of use.

(a) An application for the issuance of a patent for the land, signed by the approved holder thereof, must be filed in triplicate with the manager at any time after six months and before the expiration of three years from the date of issuance of the certificate of purchase. An application filed after expiration of the three-year period will be rejected. The application must include a showing as to the nature and cost of the improvements and structures placed on the land showing substantial compliance with the declared land utilization program; and the use, dates, and periods of use of the land which must aggregate not less than six months.

(b) There must be furnished with the application the affidavits of two disinterested persons, based upon their own knowledge, that the land has been used for the purpose for which it was sold for an aggregate period of not less than six months. In addition, the approved holder may submit, if he desires, or he may be required by the manager to submit any other evidence which will constitute satisfactory proof that the land has been utilized for such purpose for the required period.

§ 2241.5–2 Issuance; reservations; disposal of minerals.

(a) If the proof is satisfactory and the land has been surveyed, the manager will authorize the issuance of the patent in fee, subject to the reservations listed in the certificate of purchase.

(b) Any minerals subject to the leasing laws in the lands sold or patented under the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal.

(c) Mining claims for minerals subject to the United States mining laws may be located in accordance with the applicable provisions of Group 3400 of this chapter, and the additional conditions and requirements of this part notwithstanding the lands have been segregated pursuant to §§ 2241.1–1(c) and 2013.9–5 or sold under the act. The locator of any such mining claims must file for record in the proper land office, not later than 90 days after the location is made, a copy of the notice of location of the claim, with the name and address of each owner of the claim and the description of the land claimed.

(d) If the land is surveyed, the copy of the location notice must describe the legal subdivision or subdivisions partly or wholly covered by the mining claim; or the copy may be accompanied by a separate statement of the locator describing the legal subdivisions affected. If the land is unsurveyed, the copy of the location notice should describe the land by metes and bounds connected by course and distance to the nearest corner of the public land surveys, if practicable or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments or the copy of the notice may be accompanied by a separate statement of the locator giving the same information. The mining claimant must file within 90 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or as to compliance, in lieu thereof, with any applicable relief act.

(e) Such location duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title, possessory or otherwise, to the surface or surface resources other than the right to occupy and use so much thereof as is reasonably required for carrying on mining or prospecting, subject to the general regulations of the Secretary of the Interior, and the provisions contained in Group 3400 of this chapter. An application for the issuance of a mineral patent should be noted "Mining claim on land sold under the act of August 30, 1949 (63 Stat. 679; 48 U.S.C. 364a–364e)." A mineral patent for a mining claim on land so segregated or sold under this act will convey title only to the mineral deposits within the claim and will carry a reference to the act of August 30, 1949.

(f) Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

Subpart 2242—Townsites

AUTHORITY: The provision of this Subpart 2242 issued under R.S. 2478; 43 U.S.C. 1201, Interpret or apply R.S. 2380–2389, as amended, 2391–2394, secs. 1, 3, 4, 19 Stat. 392, as amended, sec. 16, 26 Stat. 1101, 26 Stat. 502, 32 Stat. 820; 43 U.S.C. 711–731, except as otherwise noted.

§ 2242.0–3 Authority.

Reservation of public lands for town site purposes. Public lands have been reserved by the President for town site purposes, from time to time, under section 2380 of the Revised Statutes (43 U.S.C. 711). Reservation for such purposes may now be made by public land order, by the Secretary of the Interior, pursuant to Executive Order No. 9337 of April 24, 1943 (3 CFR, 1943 Cum. Supp.). The reservations may be made by the Secretary of the Interior on his own motion, or petitions may be addressed to him requesting the reservations. Such petitions should be filed with the State Director for the area in which the lands are situated. (E.O. 9337 was superseded by E.O. 10355.)

§ 2242.0–6 Qualifications of town-lot purchasers.

Unless otherwise provided by law, every person purchasing a town lot at public or private sale, under any law governing the sale and disposal of town sites on the public domain, will be required to furnish evidence that he is a citizen of the United States or has declared his intention to become such and every corporation purchasing a town lot will be required to furnish evidence, including a certified copy of its articles of incorporation, showing that it is a corporation organized under the laws of the United States or of any State, Territory, or possession thereof and that it is authorized to acquire and hold real estate in the State in which the town site is situated.

§ 2242.0–8 Water rights.

(a) *Water-right application for private land used for town-site purposes.* Where water-right application has been made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for town site rather than for agricultural or horticultural purposes. In such case no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder as if no such sale or sales had been made.

(b) *Water for town-site areas.* Water for land subdivided into such form and areas as to indicate a use thereof for town site rather than for agricultural or horticultural purposes may be procured for the entire areas so subdivided by contract with the Bureau of Reclamation through the proper representatives of the land owners, as authorized by the Secretary of the Interior under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U.S.C. 561, 563, 568).

(c) *Adjustment of water rights.* Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for town site rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users' association may be surrendered and canceled, and water supplied to such lands under the provisions of the acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the "reclamation fund" an amount not less than the charges due under such water-right applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

§ 2242.1 Procedures.

§ 2242.1–1 Survey and appraisal.

(a) *Survey of reserved land into blocks and lots; appraisal thereof.* Town sites reserved under section 2380, Revised Statutes, or under any other law directing their disposition under section 2381, Revised Statutes (43 U.S.C. 712) will be surveyed, when ordered by the Bureau of Land Management, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the State Director. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for pubilc purposes will not be appraised.

(b) *Schedule of appraisement; disposal of copies thereof.* The schedule of appraisement must be prepared in triplicate on forms furnished by the State Director, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to said officer.

§ 2242.1–2 Sale.

(a) *Time, place and terms of sale.* A notice of sale will be issued in each case by the authorized officer prescribing the time when, the place where, and the terms under which the lots will be offered.

(b) *Publication in Federal Register; sale to be given other publicity.* Every notice of sale shall be published in the FEDERAL REGISTER and every sale shall be given such other publicity, without cost to the Government, as may be deemed proper by the authorized officer.

(c) *Lot purchase limitation authorized; manner of making bids.* In appropriate cases the authorized officer may limit the number of lots each person may buy. Bids and payments may be made through agents, but not by mail, or at any time or place other than that fixed in the notice of sale.

(d) *Penalty for combinations in restraint of the sale.* All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or prevent the sale, and all persons so offending will be prosecuted under 18 U.S.C. 1860.

(e) *Reoffering at public sale; private entry.* (1) An offering at public sale may be adjourned or closed, in the discreation of the State Director or other officer conducting the sale. If adjourned, the unsold lots will be held for future disposition at public sale. If closed, the unsold lots will become subject to private entry at the appraised price.

(2) Lots sold at public sale and forfeited because of nonpayment of the purchase price, or for any other reason, will be held for further offering at public sale, unless reentry of the lots at private sale, at a designated price, is authorized by the notice under which the lots are sold.

(3) Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

§ 2242.2 Town sites platted by or for occupants.

§ 2242.2–1 Town site settlement.

Section 2382 of the Revised Statutes, as amended by the act of August 24, 1954 (68 Stat. 792) and sections 2383, 2384, and 2386 of the Revised Statutes (43 U.S.C. 713–715, 717), authorize the platting of town sites by or for the occupants and the disposal of such town sites, where town site settlement has been or may be made upon unreserved public lands subject to such settlement. Public lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, or 6964 of February 5, 1935, are not subject to occupation for town site purposes unless first classified for such occupation, pursuant to Subpart 2411.

§ 2242.2–2 Filing required.

(a) *Filing with county recorder of plat, field notes, and statement of improvements.* (1) The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (i) that the land does not include an area in excess of 640 acres; (ii) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the townsite survey are tied to a designated, permanent, and thoroughly identified monument; (iii) that the streets, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town, are correctly delineated thereon; and (iv) the exterior lines of all existing railroad rights-of-way and station grounds. The lots shall conform in size to local ordinances or accepted local standards for subdivision platting, or in the absence of such ordinances or standards, to standards prescribed by the authorized official of the Bureau of Land Management. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

(2) A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and over the signature of the party acting for and on behalf of the occupants of the land.

(b) *Filing in land office, in duplicate, of transcript of plat, field notes, and statement.* (1) Within one month after filing such plat, field notes, and statement,, a transcript thereof in duplicate, each copy duly verified by the certificate of the county recorder, and accompanied by the statement of the two persons that such town has been established in good faith, and showing the number of inhabitants thereof and when it was so established, shall be filed with the manager of the land office having jurisdiction over the land district in which the town site is located.

(2) All filings made in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

§ 2242.2–3 Notice to be issued; preemption proofs; public sale of unclaimed lots.

After the town site plat has been approved by the Bureau of Land Management, a notice will be published in the FEDERAL REGISTER stating the conditions under which preemption proofs may be submitted by the lot claimants and the time, place, and conditions for the offering of the unclaimed lots at public sale. This notice should be given such other publicity without cost to the Government as is deemed appropriate.

§ 2242.2–4 Survey.

(a) *Adjustment of town-site survey to township survey.* When the town site is upon land over which the township surveys have not been extended, the State Director will be notified and thereafter, when the township surveys have been extended over the land, the exterior lines of the town site may be adjusted thereto where it can be done without impairing vested rights.

(b) *Survey by Department of the Interior; increase in price of lots.* Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as required, within 12 months from the establishment of a town on the public domain, will authorize the Bureau of Land Management to cause a survey and plat to be made thereof, the lots in which shall be disposed at an increase of 50 per centum on the minimum price.

§ 2242.2–5 Minimum price of lots.

The minimum price for all lots is $10 per lot, except in cases where the survey into lots and blocks is made by the Government, in which case the minimum price is $15 per lot.

§ 2242.2–6 Preemption rights.

(a) *Preemption claims, publishing and posting of proof notices.* (1) A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the land office his application therefor, and

therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed by the applicant and the notice for publication must be issued, and posted by the manager, and published at the expense of the applicant once a week for 5 consecutive weeks, in accordance with § 1824.4 of this chapter.

(2) All notices of intention to make proof of preemption claims pursuant to this section must be accompanied by a service charge of $5 which will not be returnable.

(3) Where a husband and wife are joint settlers, and the husband purchases two lots, as stated, the wife may also purchase an "additional lot" upon which she has placed substantial improvements.

(b) *Preemption proof.* Preemption proof may be made before the manager, or any officer duly authorized by law, and must show (i) due publication of the manager's notice, (ii) the claimant's age, (iii) his citizenship, in the manner required by § 1811.1 of this chapter, and (iv) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid when the proof is made. Entry of public lands under other laws, or in other town sites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

§ 2242.2–7 Conflicts.

(a) *Hearings.* Hearings will be ordered and conducted in accordance with Part 1840 and 1850 of this chapter, where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application on or before the day fixed for making proof but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within 30 days from notice thereof.

(b) *Conflicting mineral claims.* Mineral surveys, locations, applications, and entries covering lots in such town sites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

(c) *Lots wholly or partly covered by mineral patents.* Lots wholly covered by outstanding mineral patents are not subject to entry under the town site law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued.

§ 2242.2–8 Forfeiture of preemption right.

All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the manager will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

§ 2242.2–9 Conduct of sale; minimum sale price; private entry.

The public sale will be conducted in the form and manner provided for the sale of town lots under § 2242.1–2. No lot shall be sold for less than the minimum price fixed therefor, and such lots as may not be disposed of at public sale shall thereafter be liable to further public sale or to private entry at such minimum, or at such reasonable increase or diminution as the authorized officer may order after at least 3 months' notice thereof, to be published in the FEDERAL REGISTER.

§ 2242.3 Townsites entered by trustees.

§ 2242.3–1 Lands subject to entry.

(a) *Authority.* (1) Public lands settled upon and occupied as a town site are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720), subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, Revised Statutes (43 U.S.C. 717, 721–723).

(2) Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to town-site settlement until such settlement has been authorized by classification. (See § 2411).

(b) *Government reservations not subject to entry.* Reservations for the use of the United States Government are not subject to town-site entry.

§ 2242.3–2 Who may make town-site entry.

If the town is incorporated, the entry must be made by the corporate authorities or by the mayor or other principal officer authorized so to do by resolution or ordinance of the town board or city council. If the town is not incorporated, the entry must be made by the judge of the county court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

§ 2242.3–3 Entry must be made in trust.

(a) The entry must be made in trust (1) as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries cannot be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective town sites can not be so entered.

(b) The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regulations prescribed by the State laws. Acts of trustees not in accordance with such regulations are void.

§ 2242.3–4 Area that may be entered.

(a) The amount of land that may be entered under sections 2387 to 2389 inclusive of the Revised Statutes (43 U.S.C. 718–720) is proportionate to the number of inhabitants. One hundred and less than 200 inhabitants may enter not to exceed 320 acres; 200 and less than 1,000 inhabitants may enter not to exceed 640 acres; and where the inhabitants number 1,000 and over, an amount not to exceed 1,280 acres may be entered; and for each additional 1,000 inhabitants, not to exceed 5,000 in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than 100 the town site shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

(b) Entry cannot be made hereunder of a greater quantity of land than 2,580 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

§ 2242.3–5 Entry of unsurveyed land; special survey therefor.

Unsurveyed public land upon which a town has been established may be entered under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U.S.C. 718–720). In such case a special survey should be procured by application to the State Director therefor, the cost of which survey will be paid out of the available appropriations for public surveys. When the plat of such survey is filed in the land office, application may be made to enter the land described therein.

§ 2242.3–6 Declaratory statements.

(a) *Filing.* Declaratory statements may be filed as the initiatory step for the entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other town-site purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the town-site laws. It should include only such

lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

(b) *Proof; posting and publication of proof notice.* The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the act of March 3, 1879 (20 Stat. 472; 43 U.S.C. 251). The notice must be published once a week for five consecutive weeks in accordance with § 1824.4 of this chapter. The proof may be made before the manager or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required, by the testimony of at least two of the advertised witnesses, (1) due publication of the manager's notice; (2) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or, if by legislative enactment, a citation to such act; (3) certified record evidence of the election, qualification, and the authority of the officer making entry; (4) the number of town-site occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the town site; (6) the character, extent, and value of town-site improvements located on each Government subdivision; and (7) the date when the land was first used for town-site purposes.

§ 2242.3–7 Existing rights.

(a) *Conflicting mineral claims.* (1) Under sections 2386 and 2392 of the Revised Statutes (43 U.S.C. 717, 722), and section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 728), the title to lands acquired under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U.S.C. 718–720) will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior town-site patent.

(2) All lands covered by patented minerals claims must be omitted from town-site entries. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated by lot numbers on segregation diagram prepared by the State Director.

(b) *Prior use and occupation of land as mill site.* The continued use and occupation within a town site of a duly located mill-site claim under section 2337, Revised Statutes (30 U.S.C. 42), from a time prior to a settlement and occupation thereof for town-site purposes, will defeat the rights of the claimant under the town-site laws to any part of the land within such mill site.

(c) *Railroad rights-of-way.* Railroad rights-of-way and station grounds, when approved by the Department of the Interior, are subject to all valid rights existing at the date of filing the application for such rights-of-way or station grounds.

§ 2242.3–8 Change in method of entering town site.

Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, of the Revised Statutes (43 U.S.C. 713–717) but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720) and make proof and entry thereunder: *Provided, however,* That in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such town site and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to the Bureau of Land Management the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land, in order to effectuate such change of entry.

§ 2242.3–9 Additional entries of contiguous tracts.

Where town-site entry has been or may be made, under the provisions of sections 2387 to 2393 of the Revised Statutes (43 U.S.C. 718–723), additional entries may be made, under the provisions of section 4 of the act approved March 3, 1877 (19 Stat. 392; 43 U.S.C. 727), of such contiguous tracts as may be occupied for town-site purposes, but such additional entry shall not, together with all prior entries made for such town site, be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in section 2389, Revised Statutes: *Provided, however,* That such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are provided for entries under said sections 2387 to 2393, inclusive.

§ 2242.4 Reclamation projects.

§ 2242.4–1 Withdrawal and survey of land.

The Commissioner of Reclamation, with the concurrence of the Bureau of Land Management, may withdraw and reserve such lands for town site purposes, under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U.S.C. 434, 448, 561–563, 568, 594), as they may deem advisable. The Commissioner of Reclamation shall, when in his judgment the public interests require it, from time to time, cause not less than a legal subdivision, according to the official township surveys, of the lands so reserved to be surveyed into town lots, with appropriate reservations for public purposes. The plats and field notes of such surveys shall be prepared in triplicate for each town site, and shall be submitted for the approval of the Director, Bureau of Land Management.

§ 2242.4–2 Procedure governing appraisement and sale.

The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate officer of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation town sites. Notices of sale will be issued and other actions taken by those officers in accordance with the town site regulations contained in §§ 2242.0–3 and 2242.1.

§ 2242.4–3 Installment payments.

Under authority of section 2 of the act of June 11, 1910 (36 Stat. 466; 43 U.S.C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in town sites created under the laws in said act mentioned, to be made in annual installments.

§ 2242.4–4 Reappraisement and sale of unsold lots.

The Commissioner of Reclamation, with the concurrence of the authorized officer of the Bureau of Land Management, may direct that unsold lots shall be reappraised under the first section of the said act of June 11, 1910 (36 Stat. 465; 43 U.S.C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 2242.4–5 Public reserves; patents therefor.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 2242.6–1.

§ 2242.5 Grant of lands in reclamation town sites for school purposes.

§ 2242.5–1 Application to be made by school district; action thereon.

(a) At any time after the approval of the survey of any Government reclamation town site and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district, in order to obtain title under the act of October 31, 1919 (41 Stat. 326; 43 U.S.C. 570), should file through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein, specifically describing the same by lot and block numbers, as delineated and designated on the approved town-site plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the act, in order that the Department of the Interior may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the town site is situate, showing that the district is a duly organized district under the laws of the State and en-

titled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

(c) There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation town site situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

(d) The application and proof must be filed in the land office wherein the land applied for is situate, and if the manager thereof finds the same sufficient and if the Bureau of Reclamation makes favorable report upon the said application, the manager will issue certificate of entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

§ 2242.6 Public reserves in Oklahoma town sites.

§ 2242.6–1 Applications for patents on behalf of the municipalities.

Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under section 22 of the act of May 2, 1890 (26 Stat. 91; 43 U.S.C. 1094), or under any other act where tracts have been reserved for such purposes under said secton 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the mayor or other proper municipal officer and describe the reservations to be patented according to the approved plats of said town site, and the same should be accompanied with the proof of the municipal organization of the town, similar to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for town-site purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the Bureau of Land Management and if the same is found sufficient, the certificate of entry will issue in the form provided therefor.

§ 2242.6–2 Disposal of unpatented public reserves in vacated town sites.

Under the act approved May 11, 1896 (29 Stat. 116; 43 U.S.C. 1119), where a town site or an addition to a town site in a homestead commuted to a town-site entry under the second proviso of section 22 of the act approved May 2, 1890 (26 Stat. 91; 43 U.S.C. 1094), has been vacated under the laws of Oklahoma and patents for the public reservations therein have not been issued, such reservations will be disposed of in the following manner:

(a) Application for a patent to such reservations may be filed by the original entryman within 6 months from the vacation of the town site, and proof must be filed by him, with the Bureau of Land Management of the due vacation of such town site in accordance with the requirements of the laws of Oklahoma, which proof must consist of a copy of the record evidence of such vacation, duly certified. Such proof must also be accompanied with evidence that the corporate authorities of the municipality, if one be organized, in which the reservations were situated prior to such vacation, have been personally served 30 days prior to making such proof with notice of the application and of the date the proof will be made. If the proof be found sufficient the entry will be allowed for the reservations as described in the town-site plat upon receipt of the payment of the homestead price. If the municipality is represented at the time of making proof, it may be heard in opposition to the application and decision be rendered thereon subject to appeal as in other cases.

(b) In case of the failure of the original entryman to apply for patent to such reservations within 6 months from the vacation of such town site, or in case such reserves have been patented to the municipality and it has ceased to exist by reason of such vacation, the reservations will be disposed of as isolated tracts under the provisions of section 2455, Revised Statutes (43 U.S.C. 1171), and the acts amendatory thereof, and the regulations issued thereunder.

§ 2242.6–3 Disposal of patented public reserves in vacated town sites.

Reservations may be sold by an existing municipal corporation, upon the vacation of the town site, where patent has been issued to such municipality therefor, the proceeds of such sale to be covered into the school fund of such corporation. (City of Enid, 30 L.D. 352.)

§ 2242.7 Town sites on mineral lands.

§ 2242.7–1 Rights of mineral claimant; exclusion of mineral claim or mill site from town-site entry.

(a) The general town-site laws, comprised in sections 2380 to 2394, Revised Statutes (43 U.S.C. 711–724), authorize the entry of town sites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said town-site laws are expressly protected by sections 2386 and 2392, Revised Statutes (43 U.S.C. 717, 722). These two sections recognize the superior rights, as against any town-site claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of town-site entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (39 L.D. 356). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns), will not be prejudiced by any previous town-site entry, deed, or patent covering the same land (26 L.D. 144; 29 L.D. 426; 32 L.D. 211; 34 L.D. 276 and 596).

(b) Under said general town-site laws, as construed by the Department of the Interior and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the county judge (34 L.D. 24). While such general right of entry by or for incorporated towns and cities is therefore independent of anything contained in section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 728), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of section 16 is similar to that given generally in said sections 2386 and 2392, Revised Statutes, but the proviso to section 16 is as follows:

Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

(c) The Department of the Interior has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of town-site occupants and mineral claimants; which is, that whereas the town-site patent will, in either case, carry absolute title to any mineral not known to exist at the date of town-site entry, the adverse rights of mineral and town-lot claimants within incorporated towns are hinged upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the town-site law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the town-site entry, to contain valuable minerals.

(d) Subject to the distinction above noted, the foregoing principles apply to all mineral claims within town sites entered or disposed of under any of the

laws above mentioned, and also to mineral claims within town sites disposable under special acts containing no reference to the rights of mining claimants.

(e) The law does not require that town-site entries shall exclude any mineral claim or possession except such as may have been patented (29 L.D. 21). Mineral claims which have not been patented may be excluded from a town-site entry at the option of the town-site applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L.D. 542). The exclusion of a mill-site claim from a town-site entry is necessary only in cases where the mill-site claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for town-site purposes. The issue of priority in such cases may be raised by the town-site applicant, the mill-site claimant, or the Government.

§ 2242.8 Rights of transferees of town lots.

§ 2242.8–1 Patent to issue in name of original purchaser.

The purchaser of a town lot, which is sold on the installment plan, may transfer his equitable interest in the lot, prior to the payment of the last installment of the purchase price, but the Government will not recognize anyone but the original purchaser and will issue all necessary papers and also the patent in his name. By such course, the Government is relieved of all unnecessary responsibility and the patent, when issued, inures to the benefit of the transferee.

§ 2242.9 Alaska.

§ 2242.9–1 Authority.

(a) Town sites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381 of the Revised Statutes; 43 U.S.C. 711, 712. The regulations governing these town sites are contained in §§ 2242.0 and 2242.1.

(b) The entry of public lands in Alaska for town site purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, is authorized by section 11 of the act of March 3, 1891.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

§ 2242.9–2 Townsites entered by trustee.

(a) *Survey of exterior lines; exclusions from town site survey.* If the land is unsurveyed the occupants must by application to the State Director, obtain a survey of the exterior lines of the town site which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the town site any lands set aside by the district court under section 31 of the act of June 6, 1900 (31 Stat. 332; 48 U.S.C. 40), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

(b) *Petition for trustee and for survey of lands into lots, blocks, etc.* When the survey of the exterior lines has been approved, or if the town site is on surveyed land, a petition, signed by a majority of occupants of the land, will be filed in the land office requesting the appointment of trustee and the survey of the town site into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots, as provided in paragraph (h) of this section.

(c) *Designation of trustee; payment required: area enterable.* If the petition be found sufficient, the Secretary of the Interior will designate a trustee to make entry of the town site, payment for which must be made at the rate of $1.25 per acre. If there are less than 100 inhabitants the area of the town site is limited to 160 acres; if 100 and less than 200, to 320 acres; if more than 200, to 640 acres, this being the maximum area allowed by the statute.

(d) *Filing of application; publication and posting; submission of proof.* (1) The trustee will file his application and notice of intention to make proof, and thereupon the manager will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the town site does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initated under Russian rule.

(2) The trustee's application shall be accompanied by $10 application service fee which shall not be returnable.

(e) *Expense money to be advanced by lot occupants.* The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry to be refunded to them when realized from lot assessments.

(f) *Contests and protests.* Applications for entry will be subject to contest or protests as in other cases.

(g) *Subdivision of land and payment therefore.* After the entry is made, the town site will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments collected.

(h) *Lot assessments.* The trustee will assess against each lot, according to area, its share of the cost of the subdivisional survey. The trustee will make a valuation of each occupied or improved lot in the town site and assess upon such lots, according to their value, such rate and sum in addition to the cost of their share of the survey as will be necessary to pay all other expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of the act of March 3, 1891, and this section.

(i) *Award and disposition of lots after subdivisional survey.* On the acceptance of the plat by the Bureau of Land Management, the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional town site survey or their assigns thereafter, are entitled to the allotments herein provided. Minority and coverture are not disabilities.

(j) *Applications for deeds.* Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be corroborated by two witnesses.

(k) *Issuance of deeds; procedure on conflicting applications.* (1) Upon receipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots, the trustee, if he considers it necessary, may order a hearing to be conducted in accordance with the Part 1850 of this chapter.

(2) No deed will be issued for any lot involved in a contest until the case has been finally closd. Appeals from any decision of the trustee or from decisions of the Bureau of Land Management may be taken in the manner provided by Part 1840 of this chapter.

(l) *Public sale of unclaimed lots.* After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional town-site survey, and all lots and tracts claimed and awarded on which the assessments have not been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional town-site survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot, and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published once a week for 5 consecutive weeks in accordance with § 1824.4 of this chapter prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the town site. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

(m) *Sales to Federal, State and local governmental agencies.* (1) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to this section may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him to any Federal or State agency or instrumentality or to any local governmental agency or instrumentality of the State for use for public purposes.

(2) All conveyances under this section shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances, including, where he deems proper, a provision for reversion of title to the trustee or his successor in interest. Any such provision for reversion of title, however, shall by its terms cease to be in effect 25 years after the conveyance.

(3) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city, town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision of the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon filing of an appeal pursuant to that Part, action by the trustee on the conveyance will be suspended pending final decision on the appeal.

(n) *Rights - of - way.* (1) Notwithstanding any other provisions of this part, the trustee is authorized to grant rights-of-way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights-of-way to cities, towns, villages, and municipalities, and to school, utility, and other types of improvement districts, and to persons, associations, companies, and corporations engaged in furnishing utility services to the general public, and to the United States, any Federal or State agency or instrumentality for use for public purposes.

(2) The trustee may in his discretion fix a reasonable charge for any grant under this authority to private persons, associations, companies and corporations, and to Federal and State agencies and instrumentalities, which charge shall be a lump sum. All grants shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances. No grants of rights-of-way under this authority shall be made across or upon lands on which prior rights of occupancy or entry have vested under the law.

(3) Grants of rights-of-way under this section to Federal and State agencies and instrumentalities to private persons, associations, companies, or corporations affecting lands within any incorporated city, town, village, or municipality, may be made only after the proposed grant has received the approval of the city, town, or village council, or, where applicable, the municipal board or commission having authority under state law to approve rights-of-way for local public utility purposes. Grants of such rights-of-way to Federal and state agencies and instrumentalities and to private persons, associations, companies, or corporations within unincorporated cities, towns, villages, or municipalities may be made only after notice of the proposed grant, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision by the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon the filing of an appeal, action by the trustee on the application for right-of-way will be suspended pending final decision on the appeal.

(o) *Final report of trustee; disposition of unexpended moneys and unsold lots.* After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved.

(p) *Records to be kept by trustee.* The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

(q) *Disposition of records on completion of trust.* The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as provided in paragraph (p) of this section with all papers, other books, and everything pertaining to such town site in his possession and all evidence of his official acts shall be transmitted to the Bureau of Land Management to become a part of the records thereof, excepting from such papers, however, in case the town is incorporated, the subdivisional plat of the town site, which he will deliver to the municipal authorities of the town, together with a copy of the town site tract book or books, taking a receipt therefor to be transmitted to the Bureau of Land Management.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

§ 2242.9–3 Indian possessions in trustee towns; native towns.

(a) *Authority.* The act of May 25, 1926, (44 Stat. 629; 48 U.S.C. 355a–355d) provides for the town-site survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee town-sites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The act of February 26, 1948 (62 Stat. 35; 48 U.S.C. 355e), provides for the issuance of an unrestricted deed to any competent native for a tract of land claimed and occupied by him within any such trustee town-site.

(b) *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee town-sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 48 U.S.C. 355), and for which the town-site trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee town-sites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

(c) *Application for restricted deed.* A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee town-site and who desires to obtain a restricted deed for such tract should file application therefor on a form approved by the Director, with the town-site trustee.

(d) *Administation of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926 (44 Stat. 630; 48 U.S.C. 355c), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

(e) *No payment, publication or proof required on entry for native towns.* In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town-sites will not be required.

(f) *Native towns occupied partly by white occupants.* Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

(g) *Provisions to be inserted in restricted deeds.* The town site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of

the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

(h) *Sale of land for which restricted deed was issued.* When a native possessing a restricted deed for land in a trustee town site, issued under authority of the act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a–355d), desires to sell the land, he should execute a deed on a form approved by the Director, prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the town-site trustee in Alaska. The town-site trustee will forward the deed to the Area Director of the Bureau of Indian Affairs who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Bureau of Indian Affairs, through the town-site trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(i) *Application for unrestricted deed.* Any Alaska native who claims and occupies a tract of land in a trustee town site is the owner of land under a restricted deed issued under the act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a–355e) may file an application for an unrestricted deed pursuant to the act of February 26, 1948 (62 Stat. 35; 48 U.S.C. 355e), with the town-site trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Bureau of Indian Affairs.

(j) *Determination of competency or noncompetency; issuance of unrestricted deed.* (1) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the town-site trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the town-site trustee shall be subject to a right of appeal to the Director, Bureau of Land Management, and to the Secretary of the Interior, in accordance with Part 1840 of this chapter.

(2) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs, within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(3) Except as provided in this section, the town-site trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

(44 Stat. 630; 48 U.S.C. 355d. Interpret or apply 44 Stat. 629, 630, 62 Stat. 35; 48 U.S.C. 355a, 355b, 355c, 355e)

§ 2242.9–4 Method of sale.

Sales of railroad town sites in Alaska, provided for by Executive Order No. 3489 of June 10, 1921, § 2242.9–5(a)–(j), will be made by the authorized officer in Alaska, as superintendent of sales of railroad town sites in accordance with town-site regulations contained in §§ 2242.0–3 to 2242.1–2(e) so far as those regulations are applicable.

(Sec. 1, 36 Stat. 305; 48 U.S.C. 803)

§ 2242.9–5 Alaska Railroad town sites.

It is hereby ordered that the administration of that portion of the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 301, 302; 303–308) relating to the withdrawal, location and disposition of town sites shall be in accordance with the following regulations and provisions, to wit:

(a) *Reservations.* The Alaskan Engineering Commission will file with the Secretary of the Interior, when deemed necessary, its recommendations for the reservation of such areas as in its opinion may be needed for town site purposes. The Secretary of the Interior will thereupon transmit such recommendations to the President with his objections thereto or concurrence therewith. If approved by the President, the reservation will be made by Executive order.

(b) *Survey.* When in the opinion of the Secretary of the Interior the public interests require a survey of any such reservation, he shall cause to be set aside such portions thereof for railroad purposes as may be selected by the Alaskan Engineering Commission, and cause the remainder, or any part thereof, to be surveyed into urban or suburban blocks and lots of suitable size, and into reservations for parks, schools, and other public purposes and for Government use. Highways should be laid out, where practicable, along all shore lines, and sufficient land for docks and wharf purposes along such shore lines should be reserved in such places as there is any apparent necessity therefor. The survey will be made under the supervision of the Commissioner of the General Land Office and the plats will be approved by him and by the chairman of the Alaskan Engineering Commission.

(c) *Preference right.* Any person residing in a reserved town site at the time of the subdivisional survey thereof in the field and owning and having valuable and permanent improvements thereon, may, in the discretion of the Secretary of the Interior, be granted a preference right of entry, of not exceeding two lots on which he may have such improvements by paying the appraised price fixed by the superintendent of sale, under such regulations as the Secretary of the Interior may prescribe. Preference right proof and entry, when granted, must be made prior to the date of the public sale.

(d) *Public sale.* The unreserved and unsold lots will be offered at public outcry to the highest bidder at such time and place, and after such publication of notice, if any, as the Secretary of the Interior may direct, and he may appoint or detail some suitable person as superintendent of sale to supervise the same and may fix his compensation and require him to give sufficient bond.

(e) *Superintendent's authority.* Under the supervision of the Secretary of the Interior the superintendent of the sale will be, and he is hereby, authorized to make all appraisements of lots and at any time to reappraise any lot which in his judgment is not appraised at the proper amount, or to fix a minimum price for any lot below which it may not be sold, and he may adjourn, or postpone the sale of any lots to such time and place as he may deem proper.

(f) *Manner and terms of public sale.* (1) The Secretary of the Interior shall by regulations prescribe the manner of conducting the public sale, the terms thereof and forms therefor and he may prescribe what failures in payment will subject the bidder or purchaser to a forfeiture of his bid or right to the lot claimed and money paid thereon. The superintendent of sale will at the completion of the public sale deposit with the receiver of the proper local land office the money received and file with its officers the papers deposited with him by said bidder, together with his certificate as to successful bidder.

(2) If it be deemed advisable, the Commissioner of the General Land Office may direct the receiver of public moneys of the proper district to attend sales herein provided for in which event the cash payment required shall be paid to the said receiver.

(g) *Anchorage, Matanuska, and Nenana town sites.* (1) Unsold and forfeited lands in the town sites of Anchorage, Matanuska, and Nenana, upon

which assessments for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection have been levied by the Alaskan Engineering Commission and the assessments or any portion thereof remaining unpaid shall be subject to such unpaid assessments and the purchaser shall pay the same in the manner the Secretary of the Interior may by regulations provide, and the proceeds of such assessments will be deposited with the Alaskan Engineering Commission, as a reimbursement to the operating expense fund as provided in section 8 of the act of March 12, 1914 (38 Stat. 307; 48 U.S.C. 306). See 22 Comp. Dec. 604. Hereafter no such assessments by said Commission will be levied.

(2) In cases where one of a number of joint purchasers of a lot has made or may hereafter make all payments of his pro rata share of the purchase price and assessments on the lot, such lot may, in the event of forfeiture being declared, and in the discretion of the Secretary of the Interior, be re-subdivided and a preference right of purchase given to the person who has made all payments on his portion thereof, such preference right to be confined to the portion of the original lot held and claimed by such person. This privilege may be extended to a transferee of an original purchase.

(3) Final certificate may issue in these town sites in all cases, when the purchase price and assessments are paid in full without regard to date of purchase.

(h) *Commission buildings on lots.* Buildings belonging to the Alaskan Engineering Commission situated on a lot in any town site may be appraised and sold separate and apart from the lot on which located, under regulations provided by the Secretary of the Interior for the same and for the removal of the buildings. The proceeds for the sale of such buildings shall be paid to the Alaskan Engineering Commission as a reimbursement to its operating account.

(i) *Private entry.* Lots offered at public sale and not sold and lots offered and declared forfeited in a town site may, in the discretion of the Secretary of the Interior, be sold at private entry for the appraised price.

(j) *Orders revoked.* All Executive orders heretofore issued for the disposition of town sites along the Government railroads in Alaska are hereby revoked so far as they conflict with the foregoing provisions. This order is intended to take the place of all other orders making provisions for the sale and disposal of lots in said town sites along Government railroads in Alaska under the provisions of said act.

(k) *Amendments*—(1) *Executive Orders.* (i) Section 2242.9–5 (a) through (j) are amended by E.O. 3529, Aug. 9, 1921 and E.O. 5136, June 12, 1929.

(ii) The designation of the "Alaskan Engineering Commission" has been changed to "The Alaska Railroad." All matters which formerly were under the control of the chairman of said commission now are under the supervision of the general manager of the said railroad. The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

(iii) Due to the change in organization, plats of Alaska Railroad town sites are not approved by an official of the Alaska Railroad.

(iv) The State Director in Alaska has been designated as Superintendent of Sales of Alaska Railroad town sites.

(2) *Executive Order 3529. It is ordered,* That Executive Order No. 3489, issued June 10, 1921, be, and the same is hereby amended to authorize and empower the Alaskan Engineering Commission to levy and collect assessments for town site expenses for the town site of Nenana, for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection, for the period from July 1, 1920, to August 31, 1921.

CROSS REFERENCES: For surveys, Alaska, see Part 9180 of this chapter. For town sites, Alaska, see §§ 2242.9–1(a) to 2242.9–4.

(3) *Executive Order 5136.* (i) It is ordered that Executive Order No. 3489, issued June 10, 1921, containing the Alaska Railroad Town Site Regulations, is hereby amended to authorize the Secretary of the Interior to reappraise and sell the unimproved lots in Nenana Town Site, Alaska, belonging to the United States, and to readjust the assessments levied against them for the improvement of streets, sidewalks, and alleys, and for the promotion of sanitation and fire protection by the Alaska Railroad prior to August 31, 1921.

(ii) As to the lots within said town site which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

(iii) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

(Sec. 24, 26 Stat. 1103; as amended, sec. 1, 36 Stat. 847; sec. 1, 38 Stat. 305; sec. 11, 39 Stat. 865; 16 U.S.C. 471, 43 U.S.C. 141, 48 U.S.C. 307, 43 U.S.C. 301)

Subpart 2243—Public Sales

AUTHORITY: The provisions of this Subpart 2243 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2243.0–3 Authority.

(a) The sale at public auction of isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not isolated, of not exceeding 760 acres, the greater parts of which are mountainous or too rough for cultivation, is authorized by section 2455 of the Revised Statutes, as amended by section 14 of the act of June 28, 1934 (48 Stat. 1274; 43 U.S.C. 1171) and the act of July 30, 1947 (61 Stat. 630).

(b) The provisions of R.S. 2455 (43 U.S.C. 11700) authorizing public sales, were extended, with certain conditions, to the areas mentioned below, by the statutes indicated:

Area	*Statute*
Chippewa Indian lands, Minn.	Feb. 4, 1919 (40 Stat. 1055; 43 U. S. C. 1172).
Oregon and California railroad grant lands, Oreg., Class 3.	May 25, 1920 (41 Stat. 622; 43 U. S. C. 1174).
Oregon and California railroad grant and Coos Bay wagon-road grant lands, Oreg.	Section 3, August 28, 1937 (50 Stat. 875).
Oklahoma	April 24, 1928 (45 Stat. 457; 43 U.S.C. 1171a).
Alabama coal lands	May 23, 1930 (46 Stat. 377; 43 U. S. C. 1171b).

§ 2243.0–5 Definitions.

When used in this part:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the area administrator for the area in which the land is situated.

(d) "Manager" means the manager of the land office for the district in which the land is situated. When there is no land office in a State, it means the officer who has been authorized to perform the functions of the manager for sales under this part of public lands in that State.

(e) "Applicant" or "purchaser" includes an individual, a partnership, an association, or a corporation.

(f) "Land office" means the land office for the district in which the lands are situated.

§ 2243.0–6 Qualification of applicant.

An applicant for sale of a tract which is mountainous or too rough for cultivation must show that he is the owner of the whole title, that is, the fee owner, of land adjoining the land applied for, or that he holds a valid entry embracing adjoining land, in connection with which entry he has met the requirements of the law. A showing that the applicant owns cornering land or holds a valid entry of a cornering tract would not qualify him.

§ 2243.0–7 Lands subject to sale.

(a) *As isolated tracts.* (1) There is no limitation as to the number of isolated-tract applications which may be filed, nor as to the amount of such land which may be applied for or purchased by any one person or group. An application may include several incontiguous tracts, but it may not embrace an aggregate area in excess of 1,520 acres, and tracts with an area over 1,520 acres will not be ordered into the market. Each isolated tract will be offered separately and a separate cash certificate will be issued for each tract, except to the extent that they are bought by the same person.

(2) As a general rule, no tract will be deemed isolated unless it is completely surrounded by lands held in non-Federal ownership, or is so effectively separated from other federally owned lands by some permanent withdrawal or reservation as to make its use with such lands impracticable. A tract is considered isolated if the contiguous tracts are all patented, even though there are other public lands cornering upon the tract.

(b) *As mountainous or too rough for cultivation.* (1) Legal subdivisions not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, may be offered for sale only upon the application of any person who owns land or holds a valid entry on lands adjoining such tract and regardless of the fact that such tract may not be actually isolated.

(2) An application under this section may not embrace more than 760 acres. An applicant may file any number of applications provided the land applied for together with such land previously purchased does not exceed 760 acres in area. The limitation under this section relates only to applications under this section. In acting on applications for rough or mountainous tracts, regard will be had to the character of each subdivision applied for. An entire tract composed of more than one legal subdivision will not be offered upon the ground that the greater part of the tract is mountainous or too rough for cultivation, if taken as a whole.

(c) *Mineral lands.* (1) Mineral lands may not be sold except under specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of those minerals to the United States. The regulations relating to applications for the surface of such lands are contained in Subpart 2023. They must be complied with whenever an application is filed for land, withdrawn, classified, or valuable for such minerals, where such land is embraced by mineral permits or leases, or applications for such permits or leases, or where the land lies within the geological structure of a producing oil or gas field.

(2) The notice of sale for publication and posting will provide that the land will be sold subject to reservations to the United States of the appropriate minerals, and in accordance with the provisions of the applicable act or acts which authorize the making of the reservation. The cash certificate and patent will provide for such reservation and will refer to such act or acts.

§ 2243.1 Procedures.

§ 2243.1–1 Application.

(a) A person who desires to have a tract ordered into market must file an application (in duplicate) together with a petition properly executed on forms approved by the Director. These documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) The application need not be under oath but must be signed by the applicant and two corroborating witnesses having personal knowledge of the facts stated therein.

§ 2243.1–2 Action upon the application or in the absence of application.

(a) If an application is not properly executed or not corroborated, if the applicant does not show himself qualified, or if the tract appears not to be subject to disposition, the application will be rejected. If part of the tract is appropriated, the application will be rejected as to that part, and, in the absence of an appeal, the description thereof eliminated from the application, and such further action will be taken as though it had never been included therein.

(b) The authorized officer may classify under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315f), as amended, land for offering under this part, and he may authorize such offering of the land for sale if he determines, in accordance with the existing regulations and procedures, that such land is suitable for disposal as an isolated or as a rough or mountainous tract, as the case may be.

(c) The authorized officer may authorize the offering of an isolated tract for sale either upon application or on his own motion.

§ 2243.1–3 Notice: publication, posting, proof.

(a) Upon the issuance of a decision authorizing the sale, a notice for publication will be sent the applicant with instructions that he publish it at his expense in the newspaper designated. Payment for publication must be made by the applicant directly to the publisher. The notice must be published prior to the date of sale in the designated newspaper, if a daily paper, in the Wednesday issue for five consecutive weeks; if a weekly, in five consecutive issues; and if a semi-weekly or tri-weekly, in the issue of the same day of each week, for five consecutive weeks. The manager will cause a similar notice to be posted in his office during the entire period of publication.

(b) The applicant must file in the land office, prior to the date fixed for the sale, evidence that publication has been had for the required period. Such evidence may consist of the statement of the publisher, accompanied by a copy of the notice published.

(c) Where a party expends money for publication of notice of a public sale, and the authorization for the sale is canceled, or a sale, if made, is vacated, because retention of the land in Federal ownership is deemed to be in the public interest, such party will be reimbursed by the Government for the expense so incurred. Where such action is taken at the request of a Federal agency other than the Bureau of Land Management, that agency will be requested to reimburse such party for the expense. Where an authorization for sale is canceled, or a sale, if made, is vacated because the appraised price or the sale price, of the land is found to be inadequate, and the land is again offered for sale, the republication will be made at the expense of the Government, and the person awarded the land must reimburse and pay directly to the applicant the amount expended for the first publication of notice. Such payment shall be made in the manner prescribed in and shall be governed by § 2243.1–6(a).

§ 2243.1–4 Bidding; place for sale.

(a) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. The land will be offered for sale at the land office of the district in which the land is situated, if there is a land office in the State. If there is no land office in the State, the sale may be held at a place within the region in which the lands are situated, to be designated by the authorized officer.

(b) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(c) Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. These bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. The envelopes containing the sealed bids will not be opened until the time fixed for the sale.

(d) The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

(e) All bidders are warned against violation of the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

§ 2243.1–5 Action at close of bidding.

(a) *Declaration of highest bidder.* When all persons present shall have ceased bidding, the manager will, in the usual manner, declare the bidding closed, subject to the preference right of purchase of owners of contiguous land (see paragraph (b) of this section), announce the amount of the highest bid and declare the offerer thereof (or his principal) the highest bidder, provided that the latter immediately pays to the manager the amount of the bid, if he has not already done so. In the absence of such payment, the manager will at once proceed with the sale, excluding the bid made by the highest bidder and starting with the next highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the first received, as shown by the hour and date noted on the envelope, will be accepted by the manager. In no event may the land be sold or a purchaser declared before the end of the 30-day period for the assertion by contiguous land owners of their preference right of purchase.

(b) *Preference right of purchase; declaration of purchaser.* The owners of contiguous lands have a preference right, for a period of 30 days after the highest bid has been received, to purchase the land offered for sale at the highest bid price or at three times the appraised price if three times such appraised price is less than the highest bid price. Such preference right may also be asserted at any time prior to the commencement of such period. Such preference right is not extended to the owner or owners of cornering lands.

(1)(i) A preference right to purchase must be supported by proof of the claimant's ownership of the whole title

to the contiguous lands (that is, he must show that he had the whole title in fee), and must be accompanied by the purchase price of the land.

Although one who holds a valid adjoining entry may file an application for the sale of lands which are mountainous or too rough for cultivation, he may not assert a preference right of purchase unless he has acquired the whole title to adjoining lands.

(ii) Failure to submit to the land office satisfactory proof during the 30-day period after the highest bid has been received will cause the preference right to be lost as to the particular public sale. Such proof must consist of (*a*) a certificate of the local recorder of deeds, or (*b*) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company showing that the claimant owns adjoining land in fee simple at or after the date of the sale. However, if the preference-right claimant does not own adjoining land at the close of the preference-right period, his preference-right claim may be lost.

(iii) After a case has been closed, the data filed pursuant to this section may be returned.

(2) If there is only one qualified preference-right claimant, or if there are conflicting qualified preference-right claimants and there is an amicable agreement among them, the manager will declare such claimant or claimants the purchasers.

(3) Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among themselves upon a division of the tracts by subdivisions. In the absence of an agreement an equitable division of the land will be made taking into consideration such factors as (i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use, including construction and maintenance of authorized improvements. If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants. Where only one subdivision is offered for sale and it adjoins the lands of two or more preference-right claimants, it will, in the absence of equitable considerations requiring otherwise, be awarded to the applicant for the sale if he is a qualified preference-right claimant; if he is not, it will be awarded to the first qualified person who properly asserts such a preference right within or prior to the 30-day preference-right period. The manager will make the award by declaring the appropriate claimant or claimants purchasers of the land.

(4) If, by the end of the preference-right period, no preference right has been asserted, the sale will be declared closed and the manager may declare the highest bidder the purchaser.

§ 2243.1–6 Action after purchaser is declared.

(a) If the applicant for the sale is an unsuccessful bidder, the person awarded the land must reimburse and pay directly to him the amount expended for publication of notice and file evidence thereof in the district land office within 10 days from the date he is declared the purchaser. If the evidence is not furnished, the manager will reject the bid and will accept the bid next in order, subject to the same conditions. Where an equitable apportionment of the land is made between two or more claimants, pursuant to § 2243.1–5(b), each of the claimants must bear an equal share of the expense.

(b)(1) Unless he has previously done so, the purchaser must, within 10 days after he has been so declared, file with the manager a statement of his citizenship, or if a partnership, a statement of the citizenship of its members. If the purchaser is an unincorporated association, a statement must be filed showing the citizenship of each member. A corporation is required to file a certified copy of its articles of incorporation showing that it is organized under the laws of the United States, or of some State, Territory or possession thereof, and that it is authorized to acquire and hold real estate in the State or Territory in which the land is situated, and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(2) If the purchaser declared by the manager is an alien individual, a partnership a member of which is an alien, an unincorporated association any appreciable number of the members of which are aliens, or a corporation, any appreciable percentage of the stock of which is held by aliens, and if the sale to such purchaser has not previously been approved by the Secretary, the declaration of the purchaser is subject to approval by the Secretary of the Interior and the manager will withhold the cash certificate until such approval has been given. Such purchaser may submit a statement of reasons why the declaration should be approved despite the question of citizenship.

(c) When there has been full compliance with the regulations in this part, the manager will issue a cash certificate to the purchaser.

§ 2243.2 Effect of application and award of bid.

(a) The filing of an application in conformity with the regulations in this part will not segregate the lands applied for from other applications under the public land laws or defeat a prior valid right initiated under any such law.

(b) Until the issuance of a cash certificate, the authorized officer may at any time determine that the lands should not be sold: *Provided,* That if the high bid is not less than the fair market value of the land on the date of sale, as such date is specified in the public notice, appreciation or depreciation in value of the lands thereafter will not alone be a basis for such determination. All public notices of offers at public sale of lands under the regulations of this part will reserve the right of the authorized officer to reject any and all bids prior to the time of issuance of final certificate for the lands. Sales will not be consummated when, for example:

(1) Circumstances reveal that the highest bid otherwise acceptable is less than the fair market value of the land on the date of the sale set in the public notice thereof, or

(2) An appropriate public requirement for the lands is identified subsequent to the public notice, or

(3) Collusive or other activities have hindered or restrained free and open bidding.

(c) The applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligations of the United States until the cash certificate is issued.

(d) The person who is declared by the authorized officer to be the purchaser shall be bound by his bid and the regulations in this part to complete the purchase in accordance therewith unless his bid is rejected or he is released therefrom by the authorized officer.

Subpart 2244—Exchanges

AUTHORITY: The provisions of this Subpart 2244 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a, except as otherwise noted.

§ 2244.1 Exchanges of privately owned lands under Taylor Grazing Act.

§ 2244.1–1 Authority.

(a) Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), authorize the Secretary of the Interior when the public interests will be benefited thereby to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. Whether an exchange will benefit the public interest shall be determined by the officer authorized to act.

§ 2244.1–2 Application.

(a) Persons, firms, or corporations desiring to exchange lands pursuant to § 2244.1 must file an application (in duplicate), together with a petition, properly executed, on forms approved by the

Director. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) The applicant must be legally capable of consummating the exchange and the application must state that he is the owner of the lands offered in exchange, and that such offered lands are not the basis of any other exchange.

(c) The application must also include a corroborated statement relative to springs and water holes on the selected lands, in accordance with §§ 2321.1–1(a) to 2321.1–2(d). The application must state that the value of the selected land does not exceed the value of the offered land.

(d) No filing fees are required. However, the applicant shall pay one-half of the advertising cost.

§ 2244.1–3 Determination of values; publication of notice of exchange.

The authorized officer shall determine the values of the offered and selected land, taking into consideration the value of any reservation of minerals, easements or other rights which are outstanding in third parties or to be made by the applicant or by the United States. If such officer determines that the value of the selected land exceeds the value of the offered land he will so inform the applicant and afford him the opportunity of bringing the exchange within the provisions of the law.

§ 2244.1–4 Publication.

(a) *When required.* (1) The authorized officer, if he has no basis to determine that the value of the selected land exceeds the value of the offered lands, that the exchange is not in the public interest, or that there is other reason not to do so, shall direct publication of the notice of exchange in the newspaper or newspapers designated by him, and require the applicant to submit proof of publication and comply with the provisions of paragraph (b) of this section and § 2241.1–5 (a) and (c).

(2) However, until patent to the selected land is issued, the authorized officer may at any time determine that the exchange should not be completed, and the applicant has no contractual or other rights against the United States, and no action taken will create any contractual or other obligation of the United States other than an obligation to pay one-half the cost of publication.

(b) *Notice for publication and designation of newspaper; cost and proof of publication.* The notice of publication must give the name and post-office address of the applicant, the serial number and date of the application, the act under which the application is filed and a description of the offered and selected lands in terms of legal subdivisions of the public land surveys, and must state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objection has been served upon the applicant. The notice must be published once a week for 4 consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered lands are situated and in the same manner in a newspaper of general circulation in the county or counties in which the selected lands are situated. One-half of the cost of publication of the notice shall be paid by the applicant. Each newspaper will collect that portion of the cost of publication from the applicant and submit proper vouchers to the United States for the remaining one-half of such cost. Proof of publication of notice shall consist of a statement by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, and attaching thereto a copy of the notice as published.

§ 2244.1–5 Deed to United States.

(a) *Requirements.* The applicant shall submit a warranty deed of conveyance of the offered land to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are situated together with satisfactory evidence of title, as required by paragraph (b) of this section showing that he was vested with a valid unencumbered title to the land at the time of the recordation of the deed. Revenue stamps required by Federal and State law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976)". A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of courtesy, dower, community interest or any other claim to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated, the grantor's spouse has no interest present or prospective in the land. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

(b) *Evidence of title; policy of title insurance or certificate of title preferred.* (1) Consummation of an exchange is expedited by applicant's submission, as evidence of title to the offered land, of a policy of title insurance in the form approved by the Department of the Interior or a certificate of title, issued by a qualified title insurance company which is acceptable to the Department of the Interior. Such evidence of title is therefore preferred. However, an abstract of title is also acceptable. The evidence of title must show and certify that title to the offered land has vested in the United States free and clear of all liens, encumbrances and assessments which may operate as liens, as of the date of recordation of the deed to the United States.

(2) A policy of title insurance or a certificate of title must be issued by a title insurance company authorized by law to issue such policies or certificates, and other evidence of title, if furnished, must be prepared and authenticated by an abstracter or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

(c) *Taxes.* In case taxes which have been assessed or levied on the offered lands constitute liens against the lands although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him.

§ 2244.1–6 Approval of exchange; rules of practice to be followed.

(a) The proof of publication, conveyance, title evidence and other evidence furnished by the applicant will be examined, and if found satisfactory and no valid objection appearing to the consummation of the exchange, title to the offered land will be accepted and patent for the selected land will issue.

(b) Should the application for exchange be finally rejected the evidence of title will be returned to the applicant and a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872).

§ 2244.2 Exchanges by States Under Taylor Grazing Act, lands within or without grazing districts.

§ 2244.2–1 Authority.

(a) *Applicable sections of Act.* Subsections (c) and (d) of section 8 of the Taylor Grazing Act, approved June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), authorize exchanges of lands between the United States and a State, upon the application of a State, and provide for the issuance of patent for the selected lands upon acceptance of title to the lands conveyed to the United States in exchange therefor.

(b) *Acts and regulations governing applications pending on June 26, 1936.* State applications for exchange pending at the date of the approval of the act of June 26, 1936, will be governed by the provisions of the Act of June 28, 1934, as amended by the act of 1936, and the regulations in §§ 2244.2–1 to 2244.2–2.

§ 2244.2–2 Lands which may be offered in exchange.

(a) *Requirements.* (1) Lands offered in exchange by a State may be lands owned by the State within or without the boundary of a grazing district, and the selected lands may be surveyed grazing district lands not otherwise appropriated or reserved, or unappropriated and unreserved surveyed public lands of the United States, within the same State. If, however, the selected lands are within a grazing district, the lands offered by the State in exchange must be within

the same grazing district and such selected lands must lie in a reasonably compact body so as not to interfere with the administration or value of the remaining lands in the district for grazing purposes.

(2) An application for exchange may be made on the basis of equal area or equal value. However, with respect to all exchange applications filed after June 20, 1946 the Secretary of the Interior will consider and determine the value of the offered and selected land and will not approve an exchange unless the values of the offered and selected land are approximately equal. In determining such values, consideration will be given to such matters as the actual appraised value of the lands, the benefits of consolidation or blocking out of land holdings by the State and the Federal Government as a result of the proposed exchange, the size of the areas involved, the value of the surface or other resources, including such reservations of minerals or easements as may be made by the State or the United States, and any other considerations which may have appropriate bearing on the value of the lands involved.

(3) When mineral lands are selected in an exchange based upon equal acreage, the patent will contain a reservation of all minerals to the United States, and in any exchanges based upon equal acreage, the State may offer mineral lands owned by the State, with a mineral reservation to the State.

(4) Unsurveyed school sections within or without the boundary of a grazing district may be offered by the State in an exchange based upon equal areas, but the Secretary of the Interior will consider and determine whether the values of the offered and selected lands are approximately equal for the purpose of the exchanges and no mineral reservations to the State may be made in such unsurveyed sections, the identification of which will be determined by protraction or otherwise, the State by such selections waiving all rights to the unsurveyed sections.

(5) State-owned lands, as well as school sections surveyed and unsurveyed the title to which has not yet vested in the State, located within national forests, national parks and monuments, Indian or other reservations or withdrawals, may be offered as a basis for an exchange under said section 8 of the Taylor Grazing Act as amended, where the selected lands are not within a grazing district. Where the selected lands are within a grazing district, lands within the exterior boundaries of the grazing district and also within such reservations or withdrawals may be offered as a basis for an exchange only if the authorized officer, Bureau of Land Management, determines that the exchange would not interfere with the administration or value of the remaining lands in the grazing district for grazing purposes.

(b) *Granted lands unaffected by their inclusion within grazing districts.* The words in section 1 of the Taylor Grazing Act "Nothing in this act shall be construed in any way * * * to affect any land heretofore or hereafter surveyed which, except for the provisions of this act, would be a part of any grant to any State" were obviously intended to preserve school sections, both surveyed and unsurveyed, included within the boundaries of a grazing district established under the provisions of the Taylor Grazing Act, in exactly the same status for the purpose of any grant to any State as the lands would have had had the Taylor Grazing Act not been passed and had the lands not been included in the grazing district.

CROSS REFERENCE: For State grants for educational purposes, see Subpart 2222.

(c) *No indemnity right accrues by the inclusion of school sections within grazing districts.* (1) A grazing district is not a reservation within the meaning of the act of February 28, 1891 (26 Stat. 796; 43 U.S.C. 851, 852), and therefore school sections, surveyed or unsurveyed, within a grazing district are not for that reason only valid base for indemnity school land selections under said act of 1891. The inclusion of unsurveyed school sections within a grazing district will not prevent the title to such lands from vesting in the State upon the acceptance of the plat of survey thereof by the Director of the Bureau of Land Management.

(2) Granted school sections owned by a State within or without the boundaries of a grazing district may be assigned by the State as a basis for an equal value, or equal area exchange, and unsurveyed school sections within or without the boundaries of a grazing district may be assigned by the State as a basis for an equal area exchange.

§ 2244.2–3 Application for exchange; evidence required; segregative effect of application.

(a) A State desiring to exchange lands under section 8 of the Taylor Grazing Act (43 Stat. 1272; 43 U.S.C. 315g), should file application, in triplicate, in accordance with the provisions of §1821.2 of this chapter. Such application should describe the lands offered to the Government as well as those selected in exchange, by legal subdivisions of the public land surveys, or by entire sections, and nothing less than a legal subdivision may be surrendered or selected.

(b) The application for exchange should identify the grazing district or districts in which the offered or selected lands are situated, if such lands lie within a grazing district, and should state whether the State desires the proposed exchange to be based upon equal value or equal acreage. In addition, the application should state whether or not any reservations of minerals, easements, or other rights of use in or to the offered lands are desired, and what use thereof is contemplated, whether the State consents to a reservation of minerals to the United States in the selected lands and what other reservations or easements which are to be made by the United States with respect to the selected lands are acceptable to the State. Each application for an exchange must be accompanied by the following certificate and statement:

(1) A certificate by the selecting agent showing that the selection is made under and pursuant to the laws of the State; that the lands selected and the lands relinquished are approximately of equal value, unless the exchange is proposed to be based on equal areas; that the State is the owner of the lands offered in exchange, if such is the case; that the offered lands are not the basis of another selection or exchange, and that the selected lands are unappropriated and are not occupied, claimed, improved, or cultivated by any person adversely to the State.

(2) A corroborated statement relative to springs and water holes on the selected lands in accordance with the regulations in §§ 2321.1–1 and 2321.1–2.

(c) The filing of a valid application for exchange under the regulations of this part will segregate the selected public lands to the extent that any subsequently tendered application, allowance of which is discretionary, will not be accepted, will not be considered as filed, and will be returned to the applicant. Where an application is withdrawn or finally rejected in whole or in part, the segregative effect of the application on the lands covered by the recall or rejection will terminate at 10:00 a.m. on the 30th day from and after the date a notice of the withdrawal or rejection is first posted in the land office having jurisdiction over said lands.

§ 2244.2–4 Additional evidence and inquiry.

(a) *Inquiry as to mineral character of selected land unnecessary in certain equal area exchanges.* Where a State exchange application is based upon equal areas and the State elects to receive title to the selected lands with a reservation of all minerals to the United States, it will not be necessary to make any inquiry as to the mineral or nonmineral character of the selected lands but, all else being regular, a patent may be issued to the State for such lands with a reservation of all minerals to the United States; *Provided,* That the State files in addition to the evidence required by the governing regulations a statement that no part of such land is claimed, occupied or being worked under the mining laws.

(b) *Additional evidence required.* After considering the application and any evidence relative thereto as he may deem necessary, the authorized officer of the Bureau of Land Management, unless he has reason to do otherwise, will issue notice for publication of the contemplated exchange, and will require the State to submit proof of publication of notice, a duly recorded deed of conveyance of the offered lands (unless such offered lands are not owned by the State), a certificate of the proper State officer showing that the offered lands have not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county, or by an abstractor or abstract company satisfactory to the Bureau of Land Management, that no instrument purporting to

convey or in any way encumber title to the offered land is of record or on file in his office. Where reservations of any kind are made in the offered lands, complete description thereof should be furnished. If, however, the offered lands were ever held in private ownership and were acquired by the State from such source, it will be necessary for the State to furnish an acceptable policy of title insurance or an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the State making the conveyance, a certificate that the lands so conveyed were free from judgments or mortgages, liens, pending suits, tax assessments or other encumbrances, except such reservations as may be made in the lands conveyed, and a certificate by the proper official of the county in which the lands conveyed are situated showing that all taxes levied or assessed against the lands conveyed to the United States, or that could operate thereon as a lien, have been fully paid or that no taxes have been levied, or whether there is a tax due on such lands that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States.

§ 2244.2–5 Deed, abstract and tax bond.

(a) *Deed of conveyance of base lands.* The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State making the exchange, and must be accompanied by a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended."

(b) *Abstract of title.* The abstract of title when required must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the office of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the offices of the clerks of courts of record affecting in any manner whatsoever the title to the land to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstracter or by an abstract company, approved by the Bureau of Land Management, in accordance with § 1863.5–1 of this chapter.

(c) *Tax bond.* In case the land conveyed to the United States has been held in private ownership and taxes have been assessed or levied thereon, and such taxes are not due and payable until some future date, the State, in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with qualified corporate surety for the sum of twice the amount of taxes paid on the land for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the State may submit a sum similar to that required in the bond, and if and when proper evidence is furnished showing the taxes on the land conveyed have been paid in full, the said sum will be returned to the State.

§ 2244.2–6 Publication notice.

(a) *Payment.* Payment of fees will not be required in the case of any exchange but the State will be required to pay one-half of the cost of the publishing notice of a proposed exchange.

(b) *Publication and proof.* (1) The publication notice must give the name of the State making application, the serial number and date of the application, act under which application is filed, describe both the offered and selected lands (except that where the offered lands are unsurveyed no notice of such lands will be required) in terms of legal subdivisions of the public land surveys, and state that the purpose of the notice is to allow all persons claiming the selected lands or having bona fide objections to such exchange an opportunity to file their protests or other objections in the district land office, or in the Bureau of Land Management, together with evidence that a copy of such protest or objection has been served upon the State. Such notice must be published once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which may be situated the lands offered to the United States, and in the same manner in some like newspaper published in any county in which may be situated any lands to be selected in exchange. In the event of the designation of a daily newspaper, the publication should be made in the Wednesday issue thereof. A similar notice will be posted in the district land office during the required period of publication. Proof of publication of notice shall consist of a statement by the publisher, or foreman or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published.

(2) The State will be responsible for payment of one-half the cost of publication, and the publisher should bill the Bureau of Land Management for the other half in accordance with instructions contained in the advertising order accompanying the notice for publication.

§ 2244.2–7 Action by Bureau of Land Management.

(a) The publication of notice, conveyance, abstract of title and other evidence required of the State will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the offered land and patent will issue for the land selected in exchange.

(b) Should information available to the Bureau of Land Management disclose inequalities of value, the Director of the Bureau of Land Management will advise the State and afford it opportunity for adjustment so as to bring the exchange within the provisions of the law.

(c) In case an exchange is authorized upon an equal acreage basis, should available information show that the selected lands are mineral in character, the State will be required to file its consent to the reservation to the United States of all minerals in such lands. In such exchanges, when the offered lands are mineral in character and the State holds title thereto the State may, if desired, reserve the mineral rights in such offered lands in accordance with the provisions of paragraph 2 of subsection (c) of section 8 of the Taylor Grazing Act, as amended.

(d) Notices of additional requirements, rejection or other adverse action will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed by Part 1840 of this chapter. Protests against exchanges should be filed in the district land office, from where they will be transmitted to the Bureau of Land Management for consideration and disposal.

(e) Should the application for exchange be finally rejected or the selection canceled for any reason, any abstract of title filed will be returned to the State, and the State will be advised of its right to apply for a quitclaim deed under existing law for the land conveyed to the United States.

§ 2244.2–8 Patents to issue to the State, subject to prior leases under Section 15 of the Taylor Grazing Act.

(a) *Authority.* The act approved August 24, 1937 (50 Stat. 748; 43 U.S.C. 315p), provides that the Secretary of the Interior in adjudicating State exchanges, under section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), involving lands embraced in outstanding leases under section 15 of said act (48 Stat. 1275, 49 Stat. 1978; 43 U.S.C. 315m) issued prior to the filing of the State exchange application, upon the request of any State may issue patent to the State, subject to such outstanding lease: *Provided,* That the United States shall not by reason of the issuance of any such patents be required to account to the State for any money due and collected prior thereto as rent for any part of the then-current annual rental period, except as provided by law.

(b) *State may request that patent issue subject to grazing lease.* Where a State application for exchange under the provisions of the Taylor Grazing Act approved June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976), is found to embrace lands included in an outstanding lease issued under section 15 of said act, before final action is taken by the Bureau of Land Management with a view to the issuance of patent on such application, the State will be afforded an opportunity to request

the issuance of patent for the land involved subject to such outstanding lease, and upon receipt of such a request by the State, further action will be taken with a view to the issuance of patent, should no objection appear of record.

(c) *Action on conflicting application for section 15 lease or for renewal of such lease.* Where an application for a lease or for the renewal thereof, under section 15 of the Taylor Grazing Act, conflicts with a pending application for a State exchange under section 8 of said act, the Bureau of Land Management may issue a lease or renewal lease for the lands in conflict, which lease shall provide for its termination as to the lands in conflict on the date when the pending conflicting State exchange application is approved for patenting.

(d) *Rental payments collected by United States.* In accordance with the proviso to the act of August 24, 1937, in cases where the United States has, prior to the issuance of such a patent, received payments for an unexpired portion of the then current annual rental period, no payment other than that provided for by section 10 of the Taylor Grazing Act, as amended (49 Stat. 1978; 43 U.S.C. 315i), will be required to be made to the State by the United States.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.3 Exchanges for the consolidation or extension of national forests.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.3–1 Authority.

The act of March 20, 1922 (42 Stat. 465; 16 U.S.C. 485), as amended, and others authorize the United States to convey Federal lands or timber and in exchange therefor to accept title to nonfederal lands which would thereby become a part of the national forest system administered by the Secretary of Agriculture.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.3–2 Applications for exchange.

All applications for exchange for the consolidation or extension of national forests must be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture. When the application involves the selection of public lands outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the applicant must also file a copy of his application, together with a petition on a form approved by the Director, properly executed, in accordance with the provisions of § 1821.2 of this chapter.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.3–3 Applicable regulations.

All applicants for exchange for the consolidation and extension of national forests must comply with the requirements of the Secretary of Agriculture. When the application involves the selection of public lands outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the applicant, if a State, must also comply with the regulations in § 2244.2 and, if not a State, with the regulations in § 2244.1 modified to meet the limitations, conditions, and provisions of the law under which the exchange is proposed and of the regulations in this part. Applications filed with the Bureau of Land Management pursuant to the regulations in this part must be accompanied by a service fee, which will not be returned, amounting to $1 for each 160 acres, or fraction thereof, of the land selected if the applicant is a State, or amounting to $2 for each 160 acres or fraction thereof, or $10, whichever is greater, if the applicant is not a State.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.4 Exchanges for consolidation or extensions of Indian reservations or Indian holdings.

§ 2244.4–1 General provisions.

(a) *Applications.* Applicants for exchange must file, in triplicate, an application, together with a petition on properly executed forms approved by the Director. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(1) Valid applications will segregate the selected lands on the records of the Bureau of Land Management.

(2) An application may be rejected at any time prior to the issuance of patent. In the event that the applicant had submitted deed and title evidence in connection with a rejected exchange, the evidence of title will be returned to the applicant and, if the deed was recorded, a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872).

(b) *Deed to the United States.* (1) Owners of private lands will be required to submit a warranty deed of conveyance of the offered land to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are situated. Revenue stamps required by Federal and State law must be affixed to the deed and canceled. A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of courtesy, dower, community interest or any other claim to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated, the grantor's spouse has no interest present or prospective in the land. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

(2) States will be required to submit a deed of conveyance of the offered land to the United States properly executed, acknowledged, and duly recorded in accordance with the laws of the State making the exchange, together with a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law.

(3) Holders of unperfected claims and Indian trust patents will not be required to submit a deed of conveyance. In lieu thereof, they will be required to submit a relinquishment of the claim or trust patent to the United States, witnessed by two persons or before a notary public or other official with a seal. The relinquishment must contain a statement that the applicant has not sold, assigned, mortgaged, or contracted to sell, assign, or mortgage the land covered by the unperfected claim or relinquished allotment.

(4) All deeds and relinquishments must state that they were made "for and in consideration of the exchange of certain lands, as authorized by" the appropriate act of the Congress.

(5) Where appropriate, the deed shall recite that the conveyance is made to the United States, "as grantee in trust" for the appropriate Indian tribe or group.

(c) *Evidence of title.* (1) Owners of private lands offered in exchange must submit a policy of title insurance, a certificate of title, or an abstract of title as evidence of title to the offered lands. (i) Consummation of an exchange is expedited by applicant's submission, as evidence of title to the offered land, of a policy of title insurance in the form approved by the Department of the Interior, or a certificate of title, issued by a qualified title insurance company which is acceptable to the Department of the Interior. Such evidence of title is therefore preferred. However, an abstract of title is also acceptable. The evidence of title must show and certify that title to the offered land has vested in the United States free and clear of all liens, encumbrances and assessments which may operate as liens, as of the date of recordation of the deed to the United States. (ii) A policy of title insurance or a certificate of title must be issued by a title insurance company authorized by law to issue such policies or certificates, and other evidence of title, if furnished, must be prepared and authenticated by an abstractor or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

(2) States must submit satisfactory evidence of title to the offered lands. (i) If the offered lands were ever held in private ownership, the State must submit a policy of title insurance, certificate of title, or an abstract of title as prescribed in subparagraph (1) of this paragraph. (ii) If the offered lands were never held in private ownership the State must submit a certificate of the proper State officer showing that the offered lands had not been sold or otherwise encumbered by the State and a certificate by the recorder of deeds or other proper officer under his official seal or by an abstracter or abstract company that no instrument purporting to convey or in any way encumber title to the offered land is of record or on file.

(3) Holders of unperfected claims and Indian trust patents must file a certificate of the recorder of deeds or other proper officer under his official seal or by an abstracter or abstract company that no instrument purporting to convey

or in any way encumber title to the offered land is of record or on file.

(d) *Taxes.* In case taxes which have been assessed or levied on the offered lands constitute liens against the lands although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him.

(e) *Publication; protests.* (1) Applicants for exchange will be required upon demand to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, in a designated newspaper and in a designated form, and at their own expense, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent under the applications. A protestant must serve the applicant a copy of the objections and furnish evidence of such service.

(2) Applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

(f) *Unperfected claims.* Patents will not issue for the selected lands when the offered lands are embraced in unperfected claims until the applicant complies with all the requirements of the law and regulations under which the unperfected claims have been held. The applicant will be credited with all acts of compliance whether earned in connection with the offered lands or selected lands or both.

(g) *Removal of improvements.* When any buildings, fencing, or other movable improvements owned or erected by an applicant on the land relinquished or conveyed are not a part of the offer to relinquish or convey, the applicant may remove such improvements from the land upon receipt of notice that the exchange has been approved: *Provided,* That such removal is accomplished within 90 days from receipt by him of said notice.

§ 2244.4–2 Executive order reservations.

(a) *Statutory authority.* The act of April 21, 1904 (33 Stat. 211; 43 U.S.C. 149), authorizes the Secretary of the Interior to exchange any unreserved, nonmineral, nontimbered, surveyed public lands located in the same State or Territory as the offered lands for any privately owned lands over which an Indian reservation has been extended by Executive order.

(b) *Criteria for approval of exchanges.* Subject to compliance with the regulations in this part, proposed exchanges will be approved if:

(1) The selected and offered lands are approximately equal in value and in area.

(2) The selected lands are suitable for disposal through exchange and are not needed for any other program or disposal.

(3) The offered lands are needed for the use of the Indians.

(4) The applicant pays all costs of consummating the exchange.

§ 2244.4–3 San Juan, McKinley, and Valencia Counties, New Mexico.

(a) *Authority.* Section 13 of the act of March 3, 1921 (41 Stat. 1239), authorizes the Secretary of the Interior to exchange any vacant, surveyed public lands, including any lands reconveyed under this act, in San Juan, McKinley, and Valencia Counties, New Mexico, for any privately owned lands, State school lands (except those granted by the act of January 25, 1927, 44 Stat. 1026, as amended by the act of April 22, 1954, 68 Stat. 57, 43 U.S.C. 870), and lands covered by valid unperfected claims, and by Indian allotments and Indian allotment selections in such counties.

(b) *Criteria for approval of exchanges.* Subject to compliance with the regulations in this part, proposed exchanges will be approved if:

(1) The selected and offered lands are approximately equal in value.

(2) The selected lands are suitable for disposal through exchange and are not needed for any other program or disposal.

(3) The exchange would serve to consolidate the holdings of the proponent.

(4) The proponent owns land in the township in which the selected lands are located.

§ 2244.4–4 Walapai Indian Reservation, Arizona.

(a) *Statutory authority.* The act of February 20, 1925 (43 Stat. 954), authorizes the Secretary of the Interior to exchange any Indian lands within the Walapai Indian Reservation for any privately owned lands, State school lands, and lands covered by valid unperfected claims within the boundaries of said reservation in Mohave and Coconino Counties, Arizona.

(b) *Criteria for approval of exchanges.* Subject to compliance with the regulations in this part, proposed exchanges will be approved if:

(1) The selected and offered lands are approximately equal in value.

(2) The selected lands are excess to the needs of the Indians.

(3) The offered lands are needed for the use of the Indians and would serve to consolidate Indian holdings.

§ 2244.4–5 Apache, Coconino, and Navajo Counties, Arizona.

(a) *Statutory authority.* Section 2 of the act of June 14, 1934 (48 Stat. 961), as supplemented by the act of May 9, 1938 (52 Stat. 300) authorizes the Secretary of the Interior to exchange (a) any vacant, nonmineral, surveyed public lands in Apache, Navajo, and Coconino Counties, Arizona, for any privately owned lands in Apache and Coconino Counties and in that portion of Navajo County north of the townships line between Townships 20 North and 21 North, Gila and Salt River Meridian, and (b) any available lands within the reservation described in the above-mentioned act of 1934 for any lands covered by Indian allotments and Indian allotment selections in the three mentioned counties.

(b) *Springs and other living waters; minerals.* (1) Applicants may select public lands containing springs or other living waters only if the offered lands contain similar waters.

(2) If an applicant reserves oil, gas, and other minerals in the offered lands, a like reservation will be made in the selected lands.

(c) *Criteria for approval of exchanges.* Subject to compliance with the regulations in this part, proposed exchanges will be approved if:

(1) The selected and offered lands are approximately equal in value.

(2) The selected lands are suitable for disposal through exchange and are not needed for any other program or disposal.

(3) The offered lands are needed for the use of the Indians.

(d) *Selections by State in lieu of school lands in reservation.* Selections by the State of Arizona in lieu of school lands within the boundary of the Navajo Reservation as defined by section 1 of the act of June 14, 1934 (48 Stat. 961), will be made in accordance with the regulations governing the selection of lands by States contained in Subpart 2222, insofar as they apply to indemnity school land selections, and will also be subject to all other existing regulations pertaining to such selections except that no fees or commissions are required, and the offered and selected lands need not be of equal area as in ordinary indemnity school land selections but need only be approximately equal in value.

§ 2244.4–6 Papago Indian Reservation, Arizona.

(a) *Statutory authority.* The act of July 8, 1937 (50 Stat. 536; 25 U.S.C. 463a–463c) authorizes the Secretary of the Interior to exchange any unreserved nonmineral public lands in Arizona for any State owned lands within the area added by the act to the Papago Indian Reservation.

(b) *Applicable regulations.* The State of Arizona will comply with the provisions of Subpart 2222, insofar as they apply to State indemnity selections, or with the provisions of § 2244.4–2, except that (1) all transactions will be made on an equal acreage basis and (2) the State will not be required to pay any fees or commissions.

§ 2244.4–7 Navajo Indian Reservation, Utah.

(a) *Statutory authority.* The act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a), authorizes the Secretary of the Interior to exchange any surveyed, unreserved, nonmineral public lands in the State of Utah for any State school sections within the area added to the Navajo Indian Reservation by the act.

(b) *Applicable regulations.* The State of Utah will comply with the provisions of Subpart 2222, insofar as they apply to State indemnity selections, except that (1) the offered and selected lands must

be of approximately equal value in addition to being of equal acreage and (2) the State will not be required to pay any fees or commissions.

§ 2244.4–8 Pueblo and Canoncito Navajo, New Mexico.

(a) *Authority.* (1) Section 2 of the act of August 13, 1949 (63 Stat. 605; 25 U.S.C. 622), authorizes the Secretary of the Interior to exchange for any lands or interests therein, including improvements and water rights, situated within the area described in section I of the notice dated March 25, 1950 (15 F.R. 1852), any lands or interests therein, including improvements and water rights, situated within the boundaries of the area described in said section I, or within the public domain area described in section II of said notice, or within any public domain in New Mexico.

(2) Section 10(a) of Public Law 87–231, act of September 14, 1961 (75 Stat. 500; 25 U.S.C. 624), provides that the Secretary of the Interior may acquire, within the Pueblo land consolidation areas, any lands or interests therein, including improvements and water rights, and in exchange therefor, may convey not to exceed an equal value of unappropriated public lands within the State of New Mexico, or, with the consent of the Pueblo authorities, any Pueblo tribal lands or interest therein, including improvements and water rights.

(3) The Pueblo land consolidation areas include any lands, acquisition of which would tend to consolidate Pueblo tribal lands held by a Pueblo at the time of such acquisition.

(b) *Criteria for approval of exchanges.* Subject to compliance with the regulations in this part, proposed exchanges will be approved if:

(1) The selected lands or interests do not exceed the value of the offered lands or interests.

(2) The selected lands or interests are approximately equal in value to the offered lands or interests.

(3) The selected lands or interests are suitable for disposal through exchange and are not needed for any other program or disposal.

(4) The offered lands or interests are needed for the use of the Indians.

(5) The tribal authorities of the Pueblo or Navajo Tribe involved give their consent to the exchange.

§ 2244.5 Exchanges to eliminate private holdings from national parks and national monuments.

§ 2244.5–1 Glacier National Park, Montana, Act of February 28, 1923.

(a) *Statutory authority.* The act of February 28, 1923 (42 Stat. 1324; 16 U.S.C. 164, 165) empowers the Secretary of the Interior to obtain for the United States the complete title to any or all lands held in private ownership within the boundaries of the Glacier National Park, by accepting from the owners of such lands complete relinquishment thereof and granting and patenting in exchange therefor an equal value of public land in the State of Montana.

(b) *Application, deed, abstract, statement, and fees required.* Applications for an exchange under the act of February 28, 1923, must be filed in the land office having jurisdiction over the land selected, the application describing the land to be conveyed as well as the land selected, according to Government subdivisions. Nothing less than a legal subdivision may be surrendered or selected. The selected land must be entirely within the State of Montana. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney in fact, and when made by an agent or attorney in fact proof of authority must be furnished. The application must be accompanied by the necessary relinquishment, abstract of title, statements, and fees, as set forth in § 2244.3.

(c) *Action on application; field examination and report.* The authorized officer, if necessary, will have a field examination and report made of both the selected and the base lands to determine whether or not their value is equal within the meaning of the act of February 28, 1923, with reference to their character as mineral, prairie, grazing, agricultural, timber, desert land or otherwise, as the case may be, and as to springs or water holes thereon, if any. Should the report of the authorized officer show curable defects, the Bureau of Land Management will give the applicant an opportunity to amend his application, if possible, so as to cure the defects.

(d) *Publication and posting.* If the report is favorable and the selection appears regular and in conformity with the law and regulations, the authorized officer will notify the applicant and require him, within 30 days from receipt of notice, to begin publication of notice of his application in accordance with § 2244.3, and in due time to submit proof thereof.

(e) *Protests.* Protests will be disposed of as provided under § 2244.3.

(f) *Approval of application; relinquishment and abstract.* (1) If the authorized officer decides that the application should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the laws of the State of Montana and to have the abstract of title extended down to and including the date the deed of relinquishment or conveyance was recorded.

(2) If the authorized officer be of the opinion that further evidence as to value and character of land involved is necessary, he may institute such inquiry as he may deem advisable.

(3) The authorized officer, in the exercise of his discretion, may withhold his approval from any application made under the provisions of the act of February 28, 1923, subject to the right of appeal pursuant to Part 1840 of this chapter, although the applicant may have complied with the rules and regulations applicable thereto.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.5–2 Glacier National Park, Montana, Act of August 8, 1946.

(a) *Statutory authority.* The act of August 8, 1946 (60 Stat. 949), authorizes the Secretary of the Interior, when he deems such action to be in the best interests of the United States, to accept title to any non-Federal lands, interest in lands, buildings, or other property, real or personal, within the authorized boundaries of the Glacier National Park, as then or thereafter established, and in exchange therefor, to convey to the grantors of such property, or to their nominees, any Federally owned lands, interests in lands, buildings, or other property, real or personal, within the boundaries of the Glacier National Park, located in the State of Montana, and administered by the National Park Service, which the Secretary determines are of approximately equal value to the property being acquired. In order to facilitate the making of such exchanges, the Secretary is authorized to enter into agreements for the reservation in conveyances to the United States or for the grant in conveyances from the United States, of such estates for years, life estates, or other interests, as may be consistent with the purposes of the act, but all such limitations must be considered in determining the equality of the interests to be exchanged.

This section does not apply to exchanges which involve no interest in real property.

(b) *Informal application.* All preliminary negotiations relating to an exchange under the above act are to be conducted with the National Park Service. Any owner of property within the boundaries of the Glacier National Park who desires to take advantage of the privileges conferred by said act, must file with the Director, National Park Service, an informal application describing the privately owned property, which is offered to the United States and the property which is selected in exchange therefor. If the Director, National Park Service is of the opinion that the value of the property offered is equal to or more than the value of the selected property, and that the exchange should be consummated, he will so advise the applicant by letter, stating, among other things, his determination as to values, and will instruct the applicant to file in the proper land office, the letter, together with a formal application to exchange.

(c) *Formal application.* (1) The formal application, which must be filed in duplicate, should contain the full name and post office address of the applicant, a description of the property offered to the Government and the property selected in exchange therefor; a statement as to what, if any, reservations, easements, or rights-of-way are being made in the offered land; a statement that the applicant is the owner of the property offered in exchange, that he is legally capable of consummating the exchange, and that such property is not the basis of another selection or exchange; a statement by the applicant or some credible person possessed of the requisite knowledge, that the land selected is nonmineral in character, contains no salt springs or deposits of salt in any form to render it chiefly valuable therefor, and is not in any manner occupied or claimed adversely to the applicant; and a statement corroborated by

two credible witnesses as to springs and water holes in accordance with §§ 2321.1–1 to 2321.1–2. The application should be accompanied by the letter received from the National Park Service signifying its approval of the consummation of the proposed exchange. Any application not accompanied by such a letter will be rejected. The offered and selected property in the formal application must be identical with the property referred to in the letter of the National Park Service and all lands should be described by legal subdivisions of the public land surveys, except where unsurveyed land is selected and in which case, the description thereof must conform to § 1821.7–1 of this chapter. Where application is made to select unsurveyed land, such land must be surveyed, and the application and valuation must be adjusted to survey before patent can issue for such selected land.

(2) Where the application is filed by an individual he will be required to show he is 21 years of age, and otherwise capable of carrying through the transaction.

(3) Where the application is made by or in behalf of a corporation, a certified copy of the articles of incorporation must be furnished. If the corporation is organized under a State other than Montana the articles of incorporation must be accompanied by a certificate showing that the corporation is authorized to do business in the State of Montana.

(d) *Fees.* Fees must be paid by the applicant at the rate of $2 for each 160 acres, or fraction thereof, of the base lands offered and conveyed to the Government.

(e) *Action by Bureau of Land Management.* (1) Upon receipt of all the evidence required, examination will be made at as early a date as practicable and if the evidence is found defective an opportunity will be given the parties in interest to cure the defects, if possible.

(2) If the authorized officer determines that the value of the offered property is equal to or more than the value of the selected property and that the application should be allowed, the exchange will be approved, subject to the submission of acceptable title to the offered property and to full compliance by the applicant with this section and subject to any protests or other valid objections which may appear.

(f) *Publication and posting of notice.* Upon approval of the application the applicant will begin publication of notice thereof, at his own expense, in some newspaper, designated by the Bureau of Land Management and having general circulation in the county, or counties, in which the property offered and the property selected are situated. Such notice must be published once each week for four successive weeks. The notice should describe the property applied for as well as the property offered in exchange and give the date of filing of the application, and state that the purpose thereof is to allow all persons claiming the property selected, or having bona fide objections to such application, an opportunity to file their protests with the proper land office. Proof of publication shall consist of a statement of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. The date of such publication and posting must be given in all cases.

(g) *Protests; additional papers to be filed; action by manager.* Should no protest be filed against the allowance of the selection within 30 days from the date of the first publication of notice, and no objections appear on the records of the land office, the manager will notify the applicant that he is allowed 60 days from receipt of notice within which to file the deed or other instrument conveying the offered property to the Government, together with such title evidence as may be required by this section.

(h) *Deed or instrument of conveyances.* (1) The deed of conveyance or other instrument transferring title to the offered property to the United States must be executed, acknowledged and duly recorded in accordance with the laws of the State of Montana. Such revenue stamps as are required by law must be affixed to the instrument and canceled. The instrument should recite that it is made "for and in consideration of the exchange of certain property as authorized by the act of August 8, 1946 (60 Stat. 949)."

(2) Where such instrument is executed by an individual, it must show whether the person making the conveyance is married or single. If married, the wife or husband of such person as the case may be, must join in the execution and acknowledgment of the instrument in such manner as to bar effectually any right of curtesy or dower, or any claim whatsoever to the property conveyed, or it must be fully and satisfactorily shown that under the laws of the State of Montana in which the property conveyed is situated, such husband or wife has no interest whatsoever, present or prospective, which makes his or her joining in the instrument necessary. Where the instrument is executed by a corporation, it should recite that it was executed pursuant to an order or by the direction of the board of directors, or other governing body, and a copy of such order or direction must accompany such instrument and both should bear the impression of the corporate seal.

(i) *Abstract of title; title insurance; certificate of title.* (1) Where land or an interest in land is conveyed, applicant must file an abstract of title, a policy of title insurance or a certificate of title, as provided in this section.

(2) The abstract of title must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the offices of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens, or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the office of the clerks of courts of record affecting in any manner whatsoever the title to the land or property to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstractor or by an abstract company, which is satisfactory to the Bureau of Land Management.

(3) A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Bureau of Land Management. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit, and where the interests of the Government will be sufficiently protected thereby.

(j) *Taxes.* The applicant must furnish a certificate by the proper official of the county in which the property conveyed to the United States is situated, showing that all taxes levied or assessed against the property, or that could operate thereon as a lien, have been fully paid, or whether there is a tax due on such property that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such property. In case taxes have been assessed or levied on such property, and such taxes are not due and payable until some future date, the applicant, in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with a qualified corporate surety for the sum of twice the amount of taxes paid on the property for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the applicant may submit a sum similar to that required in the case of a bond, and if and when proper evidence is furnished showing the taxes on the property conveyed have been paid in full, the said sum will be returned to the applicant.

(k) *Further action by Bureau of Land Management.* The publication of notice, deed or other instrument of conveyance, abstract of title and other evidence required of the applicant will, upon receipt in the Bureau of Land Management be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the property conveyed to the United States and patent or other instrument of transfer will issue for the property selected in exchange. Notice of additional requirements, rejection or other adverse action will be given the applicant.

(l) *Conveyed property a part of the Glacier National Park.* All property conveyed to the United States pursuant to this section shall, upon acceptance of title, become a part of the Glacier National Park, and shall be subject to all laws applicable to such area.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.5–3 Bryce Canyon and Zion National Parks, Utah.

(a) *Authority.* Section 3 of the act of June 7, 1924 (43 Stat. 594; 16 U.S.C. 346, 402) authorizes the Secretary of the Interior, in his discretion, to exchange an equal value and approximately an equal area of unappropriated and unreserved public land in the State of Utah for alienated lands in the Utah National Park (name since changed to Bryce Canyon National Park) and the Zion National Park.

(b) *Application, deed, abstract, statement, and fees required.* Applications for an exchange under the act of June 7, 1924, must be filed in the land office having jurisdiction over the land selected, the application describing the land to be conveyed as well as the land selected, according to Government subdivisions. Nothing less than a legal subdivision may be surrendered or selected. The selected land must be entirely within the State of Utah. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney in fact, and when made by an agent or attorney in fact proof authority must be furnished. The application must be accompanied by the necessary relinquishment, abstract of title, statements, and fees, required under § 2244.3.

(c) *Action on application; field examination and report.* The authorized officer, if necessary, will have a field examination and report made of both the selected and the base lands to determine whether or not their value is equal within the meaning of the act of June 7, 1924, with reference to their character as mineral, prairie, grazing, agricultural, timber, desert land or otherwise, as the case may be, and as to springs or water holes thereon, if any. Should the report of the authorized officer show curable defects, the Bureau of Land Management will give the applicant an opportunity to amend his application, if possible, so as to cure the defects.

(d) *Publication and posting.* If the report is favorable and the selection appears regular and in conformity with the law and regulations, the authorized officer will notify the applicant and require him, within 30 days from receipt of notice, to begin publication of notice of his application in accordance with § 2244.3, and in due time to submit proof thereof. The notice must be posted in the land office during the entire period of publication and the posting must be certified to by the manager.

(e) *Protests.* Protests will be disposed of as provided under § 2244.3.

(f) *Approval of application; relinquishment and abstract.* (1) If the authorized officer decides that the application should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the laws of the State of Utah and to have the abstract of title extended down to and including the date the deed or relinquishment or conveyance was recorded.

(2) If the authorized officer be of the opinion that further evidence as to value and character of land involved is necessary, he may institute such inquiry as he may deem advisable.

(3) The authorized officer in the exercise of his discretion, may withhold his approval from any application made under the provisions of the act of June 7, 1924, subject to the right of appeal pursuant to Part 1840 of this chapter, although the applicant may have complied with the rules and regulations applicable thereto.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.5–4 Petrified Forest National Monument, Arizona.

(a) *Statutory authority.* The act of May 14, 1930 (46 Stat. 278; 16 U.S.C. 444, 444a), empowers the Secretary of the Interior, in his discretion, to obtain for the United States the complete title to any or all of the lands held in private ownership within the boundaries of the Petrified Forest National Monument, Arizona, by accepting from the owners of such lands complete relinquishment thereof, and by granting and patenting in exchange therefor, like public lands of equal value situated in Navajo and Apache Counties, Arizona.

(b) *Preliminary negotiations and informal application.* (1) All preliminary negotiations relating to an exchange under the act of May 14, 1930, are to be conducted with Custodian of the Petrified Forest National Monument in Arizona, and any owner of land subject to exchange who desires to take advantage of the privileges conferred thereby must file with the said custodian an informal application describing the land to be conveyed to the United States, according to Government subdivisions.

(2) If the custodian finds the offered land to be within the Petrified Forest National Monument and the acquisition thereof by the United States will be in accord with the purposes of the act, he will request the Director of the National Park Service to so advise the Bureau of Land Management. The Director of the National Park Service, unless he has reasons to do otherwise, shall transmit to the Bureau of Land Management the informal application, together with an estimate of the value of the offered land and his recommendations in the premises.

CROSS REFERENCE: For National Park Service, see 36 CFR Chapter I.

(c) *Action by manager; formal application, evidence and report required.* (1) The land office manager will notify the applicant that 60 days from receipt of notice will be allowed within which to file in his office a formal application and the statements required in this section. Applicants under the act of May 14, 1930 will not be required to pay any fees or commissions.

(2) The formal application must describe the offered and selected lands, which lands must be within the limits and of the character prescribed by the act of May 14, 1930. The applicant must also furnish his statement or the statement of some credible person possessed of the requisite personal knowledge, showing that the land selected is chiefly valuable for grazing and raising forage crops, does not contain merchantable timber, is not susceptible of irrigation from any known source of water supply, is of the character similar to the offered land, is situated in Navajo or Apache Counties, Arizona, or in both, and is outside the limits of the Petrified Forest National Monument, is nonmineral in character, contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor, is not in any manner occupied or claimed adversely to the selector and that no spring or water hole exists therein. If such water hole does exist, a full showing must be made in accordance with § 2321.1–1 to 2321.1–2. The applicant must also furnish a statement that he is the owner of the land to be relinquished and that the said land is not the basis of another selection or exchange.

(3) Upon approval of the application the manager will notify the applicant that within 60 days from notice, there must be furnished proof that notice of the exchange proposal describing the lands involved therein has been published once each week for 5 consecutive weeks in some newspaper or newspapers having general circulation in the county or counties in which the land relinquished and the land selected are situated, such newspaper or newspapers to be designated by the manager. The notice should describe the land to be relinquished as well as the land selected in exchange and give the date of filing of the formal application and act under which filed and should state that the purpose thereof is to allow all persons claiming the land selected or having bona fide objections to such application, an opportunity to file their protests in the land office. Proof of publication shall consist of a statement by the publisher or of the foreman or other proper employee of the newspaper in which the notice was posted showing the dates of publication, together with a copy of the notice as published.

(4) The proof of publication notice should be accompanied by an unrecorded deed to the United States of the offered land and an abstract of title showing good title to the offered land in the applicant.

(d) *Completion of exchange record.* The applicant will be required to furnish evidence by proper authority showing that all taxes levied or assessed against the offered land or that could operate thereon as a lien, have been fully paid or to furnish indemnity for such taxes as are assessed but not yet payable.

The parties in interest to any exchange under this act shall be given opportunity to cure any defects which may appear of record.

(e) *Lands conveyed to be part of monument.* When title has been accepted to any lands conveyed to the United States under the act of May 14, 1930, the lands so conveyed shall become a part of the Petrified Forest National Monument.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.5–5 Chaco Canyon National Monument, New Mexico.

(a) *Authority.* The act of February 17, 1931 (46 Stat. 1165) empowered the

Secretary of the Interior, in his discretion, to obtain for the United States the complete title to any or all alienated lands within the boundaries of the Chaco Canyon National Monument, New Mexico, by accepting from the owners of such lands complete relinquishment thereof and by granting to such owners in exchange therefor, surveyed, nonmineral and unreserved public lands of equal quality and acreage or of equal value situated elsewhere in New Mexico.

(b) *Character of lands subject to exchange.* Any person who owns lands within the boundaries of the Chaco Canyon National Monument, New Mexico, as now or hereafter defined, may under the act of February 17, 1931, exchange such land for surveyed, nonmineral and unreserved public lands in New Mexico, of equal quality and acreage or of equal value, provided that the Secretary of the Interior shall, on application or otherwise, designate public land subject to exchange under this act, which is in his opinion chiefly valuable for grazing and raising forage crops, does not contain merchantable timber, is not susceptible of irrigation from any known source of water supply, is not embraced in a valid claim and is of quality similar to the lands offered in exchange.

(c) *Who may exchange lands.* Under the act of February 17, 1931, a natural person, an association of persons or a corporation may be an applicant to exchange lands. Any owner of land within the boundaries of the Chaco Canyon National Monument in New Mexico, who desires to take advantage of the privileges conferred by the above act, may file a formal application to exchange in the land office wherein the lands selected in exchange are situated.

(d) *Application and statements required.* The formal application should set forth the name and address of the applicant and should recite that it is made under the act of February 17, 1931 (46 Stat. 1165). The application must describe by legal subdivision the land offered to the Government and the land selected in exchange. The application must show that the applicant is the owner of the land offered to the Government and that such land is not the basis of any other selection or exchange and the application must show wherein the selected land is of equal quality and acreage or of equal value to the land offered in exchange to the Government. The application should be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein. The applicant must also furnish his statement or the statement of some credible person possessed of the requisite personal knowledge, showing that the selected land is chiefly valuable for grazing and raising forage crops, does not contain merchantable timber, is not susceptible of irrigation from any known source of water supply, is not embraced in a valid claim or occupied adversely to the selector, is nonmineral in character and contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor, does not contain any spring or water hole and that no hot spring or medicinal spring having curative properties exists thereon. If any spring or water hole does exist on the selected land a full showing in accordance with § 2321.1–1(d) must be furnished, while if any hot spring or medicinal spring exists, a full showing under § 2321.1–2(c) must be furnished. Applicants under this act will not be required to pay any fees or commissions.

(e) *Joint field investigation and reports to be made.* Upon receipt of the application and statements in the Bureau of Land Management, the record will be examined and if there are no conflicts of record, the authorized officer shall make arrangements with the custodian of the Chaco Canyon National Monument to examine the offered and selected lands with a view to arriving at an exchange of equal quality and acreage or of equal value as contemplated by the act of February 17, 1931. If there are any conflicts of record they shall be eliminated before field examination is directed. The examination of the offered and selected lands shall be conducted jointly by the Bureau of Land Management and the National Park Service. This joint examination will be conducted for the purpose of establishing the equal value of the offered and selected lands involved in the exchange and to determine whether or not such lands conform to the requirements hereinbefore made, and whether or not the selected land is of the character which should be designated as subject to exchange under the above act. Upon completion of the field examination a joint report thereon, in duplicate, will be submitted to the two bureaus, respectively. In the event of a disagreement, each party making the investigation will submit a separate report to his respective bureau and send a copy thereof to the other bureau interested.

(f) *Action by Bureau of Land Management; evidence required.* When the record and field report are received in the Bureau of Land Management and an exchange of equal quality and acreage or of equal value has been established, the authorized officer of the said Bureau, unless he has reasons to do otherwise, shall designate all or part of the land selected by the applicant as subject to exchange under the act of February 17, 1931. The manager of the land office will thereupon notify the applicant that within 60 days from notice, there must be furnished proof that notice of the exchange proposal has been published for not less than 30 days in some newspaper or newspapers having general circulation in the county or counties in which the land to be relinquished and the land selected are situated. The manager shall designate the newspaper or newspapers in which the publication of notice is to be made. The notice should describe the land to be relinquished as well as the land selected in exchange and give the applicant's name and address, serial number and date of formal application and act under which filed and should recite that the purpose of the notice is to allow all persons claiming the land selected or having bona fide objections to such application an opportunity to file their protests, contests or objections in the land office. Proof of publication shall consist of a statement by the publisher or other proper employee of the newspaper, showing the dates of publication, together with a copy of the notice as published.

(g) *Deed to United States and abstract of title.* The proof of publication of notice should be accompanied by an unrecorded deed of the offered land to the United States and an abstract of title showing good title to the offered land vested in the applicant. The applicant will be required to furnish evidence by proper authority showing that all taxes levied or assessed against the offered land or that could operate thereon as a lien, have been fully paid or to furnish indemnity for such taxes as are assessed but not yet payable.

(h) *Opportunity afforded to cure defects in record.* The parties in interest to any exchange under this act shall be given opportunity to cure any defects which may appear of record.

(i) *Lands conveyed to be part of Chaco Canyon National Monument.* When title has been accepted to any lands so conveyed to the United States under the act of February 17, 1931, the lands so conveyed shall become a part of the Chaco Canyon National Monument.

(j) *Driving stock across the monument.* Any applicant who desires to take advantage of the privilege of driving stock across the monument, conferred by section 1 of the act of February 17, 1931 (46 Stat. 1165), should place the matter before the National Park Service, requesting permission to drive stock across the monument at an accessible location, and such permission may be obtained with the approval of the Secretary of the Interior.

CROSS REFERENCE: For National Park Service rules and regulations, generally, see 36 CFR Part 1.

(k) *Reservations and rights for scientific research within monument.* Section 3 of the act of February 17, 1931 (46 Stat. 1166), permits the acceptance of title by the United States to sections 17 and 21, T. 21 N., R. 10 W., and sections 3, 11 and 13, T. 21 N., R. 11 W., New Mexico, subject to such reservations by any of the owners thereof, namely, the University of New Mexico, the Museum of New Mexico and the School of American Research, as will enable such owners to continue scientific research thereon; *Provided,* That such use shall not interfere with the administration of said area for national monument purposes, and provided further that upon relinquishment by any of such owners of the rights reserved, the Secretary of the Interior may in lieu thereof grant such owners similar rights with reference to other ruins and locations within said monument. When any of the above owners desire to make reservations in the lands last described, arrangements therefor should be made with the Director of the National Park Service, before the deed of the land to the United States is executed. When such reservations are made the Director of the National Park Service shall advise the Bureau of Land Management thereof, in order that the

record may be complete and that proper notations may be made on the records of the Bureau of Land Management.

CROSS REFERENCE: For National Park Service regulations relating to scientific research in ruins and archaeological objects, see 36 CFR 1.16.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.5–6 Point Reyes National Seashore, California.

(a) *Authority.* The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., sec. 459c), providing for the establishment of the Point Reyes National Seashore in the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

(b) *Application.* (1) All preliminary negotiations for exchanges of land are to be conducted with the National Park Service. Any person holding an interest in property within the boundaries of the Point Reyes National Seashore who desires to negotiate an exchange with the United States must file with the Regional Director, Western Region, National Park Service, an informal proposal, in writing, describing the privately owned property which is to be offered to the United States and the property which is desired in exchange therefor. After consultation with the authorized officer of the Bureau which has jurisdiction over the property desired by the proponent, the Regional Director will advise the proponent, in writing, whether the proposal appears feasible and, if so, the amount of money, if any, he believes the proponent would have to pay to equalize values.

(2) Formal application: Any person desiring to effect an exchange of lands hereunder must file in the land office of the Bureau of Land Management having jurisdiction over the State or land district in which selected lands are located, an application, in duplicate, on a form approved by the Director, or its equivalent, describing the lands by metes and bounds or other proper description. However, if the selected lands are surveyed, they must be described by legal subdivisions of the public land surveys. The application must be accompanied by the notice received from Regional Director, National Park Service, required by paragraph (a) of this section.

(3) The applicant must be legally capable under the laws of the State of California and the State in which the selected lands are situated of consummating the exchange. The application must state that he is the owner of the interest in the lands offered in exchange and that such offered interest is not the basis of any other exchange.

(4) As used in this part the term "person" includes any person or entity legally capable under the laws of the States involved of conveying and holding land.

(c) *Appraisals; values; costs.* The National Park Service will arrange, by contract or otherwise, for the services of appraisers, for the purpose of appraising both the offered and selected lands or interest. The National Park Service will pay for costs of publication and of securing title evidence for the offered property. It will also reimburse the Bureau having jurisdiction over the selected lands for any costs incurred by it in processing an exchange filed pursuant to paragraph (b) of this section.

(d) *Notice for Publication.* Upon a determination by the authorized officer of the National Park Service, and of the Bureau which has jurisdiction over the selected property that the value of the offered property is approximately equal to the value of the selected property, that provision has been made for a cash payment sufficient to equalize the value of the properties exchanged, and that the exchange is consistent with the law and regulations and is otherwise in the public interest, notice of the proposed exchange will be published. The notice of publication will give the name and post office address of the applicant, the serial number and date of the application, a reference to the Act of September 13, 1962, and the description of the offered and selected lands. It will also state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objections has been served upon the applicant. The notice will be published once a week for four consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered lands are situated and in the same manner in a newspaper of general circulation in the county or counties in which the selected lands are situated. Proof of publication of notice shall consist of a statement by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, and attaching thereto a copy of the notice as published.

(e) *Deed to the United States.* The applicant will submit a deed, upon request of the authorized officer of the Bureau of Land Management, conveying the offered land to the United States, executed and acknowledged in accordance with the laws of the State of California. Revenue stamps required by Federal and State law must be affixed to the deed at the expense of the applicant. The deed should recite that it is made "for and in consideration of the exchange of certain lands as authorized by section 3 of the Act of September 13, 1962 (76 Stat. 538)." Deeds must be signed by all persons holding the interest conveyed in the offered land. Deeds must disclose the marital status of the grantor. If a grantor is married, the spouse of the grantor must join in the execution of the deed unless it be fully shown that the grantor's spouse has no interest present or prospective in the land. The deed must not be recorded by the applicant but will be recorded in the proper county land records when the exchange is ready for consummation. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its Board of Directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

(f) *Taxes and equalizing money.* In case taxes which have been assessed or levied on the offered lands constitute a lien against the lands, although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes if furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him. Cash deposit or bond for taxes and cash payment of the amount determined to be needed to equalize values will be payable upon request of the authorized officer of the Bureau of Land Management.

(g) *Conveyed property a part of Point Reyes National Seashore.* (1) The Bureau of Land Management will examine the deed, evidence of title, and other evidence required of the applicant and if all be found regular and in conformity with law, and there are no objections, will accept title to the property offered and conveyed to the United States, and will issue a deed or other instrument of transfer for the property selected in exchange, and will transmit to the applicant the cash payment, if any, necessary to balance the values.

(2) All property conveyed to the United States pursuant hereto shall, upon acceptance of title, become a part of the Point Reyes National Seashore, and shall be subject to all laws applicable to such area.

(R.S. 2478; 43 U.S.C. 1201; Act of Sept. 13, 1962; 76 Stat. 538; 16 U.S.C. 459c)

§ 2244.6 Exchanges for migratory bird or other wildlife refuges.

§ 2244.6–1 Authority.

(a) Section 303 of the act of June 15, 1935 (49 Stat. 382; 16 U.S.C., sec. 715d–2), and Reorganization Plan No. II of May 9, 1939 (53 Stat. 813, 1431, 1433; 5 U.S.C., secs. 133s, 133t), authorize the Secretary of the Interior, in his discretion and when the public interest will be benefited thereby, to accept on behalf of the United States title to any lands which in his opinion, are chiefly valuable for migratory bird or other wildlife refuges, and in exchange therefor to patent not to exceed an equal value of surveyed or unsurveyed, unappropriated and unreserved nonmineral public lands

in the same State, the value in each case to be determined by him.

(b) Section 304 of the act of June 15, 1935 (49 Stat. 382; 16 U.S.C. 715e–1) permits the private owners of lands offered in an exchange to retain such rights of way, easements and reservations in such land as will not interfere with the use of the areas involved for the purposes of the act of June 15, 1935.

(Sec. 303, 49 Stat. 382; 16 U.S.C. 715d–2)

§ 2244.6–2 Procedures.

(a) *Preliminary negotiations; informal application and procedure thereon.* All preliminary negotiations relating to an exchange under the above act are to be conducted with the Fish and Wildlife Service. Any owner of land subject to exchange who desires to take advantage of the privileges conferred by the said act, must file with the local representatives of the Fish and Wildlife Service, an informal application describing the privately owned land which is offered to the United States and the public land which is selected in exchange therefor. The land offered to the United States must be chiefly valuable for migratory bird or other wildlife refuges, while the land selected in exchange must be unappropriated and unreserved nonmineral public land of the United States, which may be surveyed or unsurveyed. If the Director, Fish and Wildlife Service is of the opinion that the offered land is chiefly valuable for migratory bird or other wildlife refuges, he will advise the applicant thereof, together with his determination as to the values of the offered and selected lands giving the prices thereof and whether in his opinion the exchange should be consummated and shall instruct the applicant to file in the land office having jurisdiction over the selected land or for lands in a State in which there is no land office, with the Bureau of Land Management, Washington 25, D.C., except the applications for exchange in North or South Dakota shall be filed in the land office at Billings, Montana; applications for exchange in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for exchange in Oklahoma in the land office at Santa Fe, New Mexico, the said letter of information and instructions together with a formal application to exchange, the statements and filing fees more specifically referred to in the following section.

(b) *Formal application; statements and fees required.* The formal application should contain the full name and post office address of the applicant, a description of the land offered to the Government and the land selected in exchange therefor, a statement as to what, if any, reservations, easements or rights-of-way are being made in the offered land, and should be accompanied by the letter received from the Director, Fish and Wildlife Service with reference to the proposed exchange. The offered and selected lands in the formal application must be identical with the lands referred to in the letter of the Director, Fish and Wildlife Service, must be in the same State, and should be described by legal subdivisions of the public land surveys, except where unsurveyed land is selected and in which case the description thereof shall conform to § 1821.7–1 of this chapter. Where application is made to select unsurveyed land, such land must be surveyed, the application and valuation must be adjusted to survey and the nonmineral character must be determined with reference to the survey, before patent can issue for such selected land. The application must be accompanied by a statement showing that the applicant is legally capable of consummating the exchange, that such offered land is not the basis of another selection or exchange, and that the selected land is unreserved, unappropriated, nonmineral land not occupied, claimed, improved or cultivated by any person adversely to the applicant. The application must be accompanied with a corroborated statement relative to springs and water holes on the selected lands, in accordance with existing regulations pertaining thereto in § 2321.1–1 to 2321.1–2. Payment of fees will be required at the rate of $2 for each selection of 160 acres or fraction thereof, and should be submitted with the formal application.

(c) *Procedure on formal application and statements.* The formal application, statements and letter to the applicant by the Director, Fish and Wildlife Service, will upon receipt in the Bureau of Land Management, be examined and if found regular and in conformity with the law and if in the opinion of the authorized officer, Bureau of Land Management, the public interests will be benefited and the application should be approved, the applicant will be required to submit proof of publication of notice, a deed of conveyance of the offered land duly recorded, an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the party making the conveyance, and a certificate as to the payment of taxes, all of which matters are more specifically referred to in §§ 2244.6–2(d) to 2244.6–3 (c).

(d) *Publication and posting of notice.* The publication notice must give the name and post office address of the applicant, serial number and date of the application, act under which the application is filed, describe both the selected land and offered land as required above in the application, and state that the purpose of the notice is to allow all persons claiming the selected lands or having bona fide objection to such exchange an opportunity to file their protests or other objections in the land office, together with evidence to show that a copy of such protest or objection has been served upon the applicant. Such notice must be published at the expense of the applicant once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which may be situated the lands selected in exchange. In the event the newspaper is a daily, the publication should be made in the Wednesday issue thereof. Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published.

(Sec. 303, 49 Stat. 382; 16 U.S.C. 715d–2)

§ 2244.6–3 Conveyance to the United States.

(a) *Deed to United States.* The deed of conveyance to the United States must be executed, acknowledged and duly recorded in accordance with the laws of the State in which the lands are situated. Such revenue stamps as are required by law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 303 of the act of June 15, 1935 (49 Stat. 382)." Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the wife or husband of such person as the case may be, must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of curtesy or dower, or any claim whatsoever to the land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such husband or wife has no interest whatsoever, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, it should be recited in the instrument of transfer that the deed was executed pursuant to an order or by the direction of the board of directors, or other governing body, and a copy of such order or direction must accompany such instrument of transfer and both should bear the impression of the corporate seal.

(b) *Abstract of title.* The abstract of title must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the office of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens, or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the office of the clerks of courts of record affecting in any manner whatsoever the title to the land to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstractor or by an abstract company, approved by the Bureau of Land Management, in accordance with § 1863.5 of this chapter.

(c) *Taxes.* The applicant must furnish a certificate by the proper official of the county in which the land conveyed to the United States is situated, showing that all taxes levied or assessed against the land conveyed to the United States, or that could operate thereon as a lien, have been fully paid, or whether there is a tax due on such land that could operate as a lien thereon but which tax is not

yet payable and that there are no unredeemed tax sales and no tax deeds outstanding against such land conveyed to the United States. In case taxes have been assessed or levied on lands conveyed to the United States, and such taxes are not due and payable until some future date, the applicant in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with qualified corporate surety for the sum of twice the amount of taxes paid on the land for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the applicant may submit a sum similar to that required in the bond, and if and when proper evidence is furnished showing the taxes on the land conveyed have been paid in full, the said sum will be returned to the applicant.

(Sec. 303, 49 Stat. 382; 16 U.S.C. 715d–2)

§ 2244.6–4 Action by Bureau of Land Management on complete record.

The publication of notice, deed of conveyance, abstract of title and other evidence required of the applicant will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the land conveyed to the United States and patent will issue for the land selected in exchange. The right of appeal, review, or rehearing may be taken in the manner prescribed by Parts 1840 and 1850 of this chapter. Protests against exchanges should be filed in the land office.

(Sec. 303, 49 Stat. 382; 16 U.S.C. 715d–2)

§ 2244.6–5 Quitclaim deed by United States.

In the event the application for exchange is finally rejected or the selection canceled for any reason, the abstract of title will be returned, and the applicant will be advised of his right to apply for a quitclaim deed under existing law for the land conveyed to the United States.

CROSS REFERENCE: For quitclaim deeds, see § 1862.0–3(b) of this chapter.

(Sec. 303, 49 Stat. 382; 16 U.S.C. 715d–2)

§ 2244.6–6 Jurisdiction over land conveyed to United States.

Land conveyed to the United States in an exchange under section 303 of the act of June 15, 1935 (49 Stat. 382; 16 U.S.C., 715d–2) shall, upon acceptance of title thereto, be held and administered by the Secretary of the Interior under the terms of section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U.S.C. 715i).

CROSS REFERENCE: Regulations and orders relating to migratory birds, see 50 CFR Part 10.

(Sec. 303, 49 Stat. 382; 16 U.S.C. 715d–2)

§ 2244.7 Exchanges for the benefit of particular States.

§ 2244.7–1 North Dakota, South Dakota, Montana, and Washington.

(a) *Authority.* The act of Congress approved May 7, 1932 (47 Stat. 150), amended the enabling Act of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889 (25 Stat. 676), so as to provide for exchanges by said States of the granted lands, for other lands, public or private.

(b) *Application for public lands in exchange for State lands.* Applications for public lands sought under the provisions of the act of May 7, 1932, must be filed, by the proper officers of the State, in the proper land office in the State, or for lands in North or South Dakota in the land office at Billings, Montana, accompanied by the following statements and certificates:

(1) A statement as to the nonmineral and nonsaline character of the land applied for, and showing that said land is unappropriated and is not occupied by and does not contain improvements placed thereon by any Indian.

(2) A certificate of the selecting agent showing that the selection is made under and pursuant to the laws of the State.

(3) A corroborated statement must be furnished relative to springs and water holes upon the land applied for, in accordance with existing regulations pertaining thereto in §§ 2321.1–1 to 2321.1–2 in the case of all similar State selections.

(4) A statement that the land relinquished and the land selected are equal in value and as near as may be of equal area.

(c) *Exchanges by legal subdivisions, or by entire sections of equal value and approximately equal area.* The exchange authorized must be made by legal subdivisions, or by entire sections, of equal value and as near as may be of equal area, and no more than approximately 640 acres may be allowed in any one selection list, which list must describe the land to be conveyed as well as the land selected. Nothing less than a legal subdivision may be surrendered or selected.

(d) *Fees.* Payment of fees will be required in the sum of $2 for each 160 acres or fraction thereof.

(e) *One selection may not be based on lands acquired under different grants.* The lands in any one selection list, offered in exchange, must be of lands charged to the same grant. For example, where university lands are offered in exchange, only university lands may be offered in the same selection list; where school lands are offered in exchange, only lands charged to the school-land grant may be offered in the same selection list; where lands under the normal school grant are offered in exchange, only lands charged to the grant for normal schools may be offered in the same selection list.

CROSS REFERENCE: For State grants for educational purposes, see Subpart 2222.

(f) *Lands selected with reservation of coal to the United States.* Lands which have been withdrawn or classified as coal lands, or are valuable for coal, may be selected, provided such selection is made with a view to obtaining title with a reservation to the United States of the coal in such lands, and of the right to prospect for, mine, and remove the same, in accordance with the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), as supplemented by the act of April 30, 1912 (37 Stat. 105; 30 U.S.C. 90).

(g) *Lands selected with reservation to the United States of phosphate, nitrate, potash, sodium, oil, gas, or asphaltic minerals.* Lands withdrawn, classified, or valuable for phosphate, nitrate, potash, sodium, oil, gas, or asphaltic minerals may be selected, provided the selection is made with a view to obtaining title with a reservation to the United States of the phosphate, nitrate, potash, oil, gas, or asphaltic minerals in such lands; and of the right to prospect for, mine and remove the same, in accordance with the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123).

(h) *Deed for lands offered in exchange; abstract of title in certain cases.* Each application for exchange under the provisions of the act of May 7, 1932, must be accompanied by a deed (unrecorded), prepared in accordance with the laws of the State in which located, governing the conveyance of real property, conveying to the United States all right, title, and interest in and to the lands offered in exchange, and must be accompanied by certificates of the proper State officer and of the proper county recorder, showing that the lands offered have not been sold or otherwise disposed of or incumbered by the State. In case, however, any of the lands have been sold by the State and title again acquired, an abstract of such title will be necessary.

(i) *Report.* The authorized officer, if necessary, will have a field examination made of both the selected and the base lands to determine whether or not their value is equal within the meaning of the act of May 7, 1932, to determine the character of the selected land as to minerals, and to determine whether or not the selected land has value for springs or water holes withdrawn in Public Water Reserve No. 107, or by E.O. 5389, of July 7, 1930.

(j) *Publication and posting; return of deed for recording and abstract for completion; approval of selection.* If the report is favorable, the authorized officer, in the absence of objection, will authorize the acceptance of the selection, and direct the manager to prepare notice for publication of the selected land, in accordance with § 2222.1–4. If, upon receipt in the Bureau of Land Management of proof of publication, it is considered that the State is entitled to such exchange, the deed will be returned to the State for recordation, and where abstract of title was required such abstract will be returned to be brought down to show the title in the United States, free from all liens and encumbrances, including tax liens. Upon the return of the recorded deed and satisfactory abstract of title, the selections will be embraced in a clear list and, in the absence of objection, certified to the State.

(k) *Amendment of application.* Should the report of the authorized officer be adverse to the State, opportunity will be given the State to amend

the application or to make such showing as may be desired. Notice of additional requirements, rejection, or other adverse action, will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed by Parts 1840 and 1850 of this chapter.

(l) *Return of deed and abstract upon final rejection of application.* Should the application for exchange be finally rejected or the selection canceled, for any reason, the unrecorded deed and the abstract of title will be returned to the State.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.7–2 Arizona.

(a) *Authority.* Section 3 of the act of June 14, 1934 (48 Stat. 962), entitled "An Act to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes", provides for the relinquishment by the State of Arizona of school lands within Coconino, Navajo and Apache Counties and the selection of public lands in lieu thereof equal in value and within the same counties.

(b) *Application for exchange of lands and accompanying evidence.* Applications for selection by the State of Arizona in lieu of any remaining school lands within Coconino, Navajo and Apache Counties, under the provisions of section 3 of the act of June 14, 1934, may be filed by the proper officers of the State, accompanied with the following statements and certificate:

(1) A statement as to the nonmineral and nonsaline character of the land applied for, showing that said land is unappropriated and is not occupied and does not contain improvements placed thereon by any Indian.

(2) A certificate of the selecting agent showing that the selection is made under and pursuant to the laws of the State.

(3) A corroborated statement relative to springs and water holes upon the land applied for, in accordance with §§ 2321.1–1(a) to 2321.1–2(d).

(4) A statement that the lands relinquished and the land selected are equal in value.

(c) *Exchanges to be made by legal subdivisions or by entire sections of equal value; fees not required.* The exchange must be made by legal subdivisions or by entire sections, of equal value, and administration will be facilitated if an application for exchange does not include more than approximately 6,400 acres of selected lands, the area of the base lands assigned thereto being dependent upon the value thereof as compared with the value of the selected lands. The application should describe the land to be conveyed as well as the land selected, and nothing less than a legal subdivision may be surrendered or selected. Payment of fees or commissions will not be required in connection with such applications.

(d) *Publication; deed of conveyance; abstract of title; certificate of nonencumbrance.* (1) Upon receipt of satisfactory reports, and no objection appearing, the Bureau of Land Management will issue notice for publication of the selection and will require the State to file proof of publication thereof, also a deed of conveyance of the offered lands duly recorded, a certificate of the proper State officer showing that the offered lands have not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or official custodian of the records of transfers of real estate, in the proper county, or by an abstracter or abstract company approved by the Bureau of Land Management, that no instrument purporting to convey or in any way encumber title to the offered land is of record or on file in his office. If, however, the offered lands were ever held in private ownership and were acquired by the State from such source, it will be necessary for the State to furnish an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the State making the conveyance, a certificate that the lands so conveyed were free from judgments or mortgages, liens, pending suits, tax assessments, or other encumbrances, and a certificate by the proper official of the county in which the lands conveyed are situated showing that all taxes levied or assessed against the lands conveyed to the United States, or that could operate thereon as a lien, have been fully paid or that no taxes have been levied, or whether there is a tax due on such lands that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States.

(2) The deed of conveyance to the United States must be executed, acknowleged and duly recorded in accordance with the laws of the State and must be accompanied with a certificate of the proper State officer showing that the officer executing the conveyance is authorized to do so under the laws of the State. The deed should recite that it is made "for and in consideration of the exchange of certain lands as authorized by section 3 of the act of June 14, 1934 (48 Stat. 962)."

(3) Notice of the selection must be published at the expense of the State once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which the selected lands may be situated. In the event of the designation of a daily newspaper, the publication should be made in the Wednesday issue thereof.

(4) Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published. Any protests against the selection should be filed in the land office.

(e) *Approval and certification of selection; amendments; appeals.* (1) Upon receipt in the Bureau of Land Management of satisfactory proof of publication of notice and deed of conveyance with the required certificates, should no objection appear of record, the exchange selection will be embraced in a clear list and approved.

(2) In the case of an unfavorable report opportunity will be given the State to amend the application or to make such showing as may be desired. Notice of additional requirements, rejection or other adverse action will be given and the right of appeal, review or rehearing recognized in the manner now prescribed by Parts 1840 and 1850 of this chapter.

(Sec. 3, 48 Stat. 962)

§ 2244.7–3 Minnesota.

(a) *Statutory authority.* The act of December 7, 1942 (56 Stat. 1042), provides that when the public interest will be served thereby Minnesota lands owned by the State and contiguous to or situate within the exterior boundaries of Federal reservations or certain land-use projects under the jurisdiction of the Secretary of the Interior or of the Secretary of Agriculture may upon selection by the State be exchanged for Minnesota lands of equal value owned by the United States and administered by one of the Secretaries mentioned.

(It is understood that the term "Federal reservations" does not include Indian reservations and that the term "lands owned by the United States" does not include lands held by the United States for the benefit of Indians.)

(b) *Who shall determine whether an exchange will be in the public interest.* An exchange of lands under this act may be made only after a determination that the proposed exchange will be in the public interest and that the offered and the selected lands are of approximately equal value. These questions will be determined by the Secretary of the Interior if he has jurisdiction of the selected lands and is to have jurisdiction of the offered lands. They will be determined by the Secretary of Agriculture if that Secretary has jurisdiction of the selected lands and is to have jurisdiction of the offered lands and if in addition he is to convey the selected lands. In all other cases, the determination will be made by the two Secretaries jointly.

(c) *Status of lands acquired from the State.* The lands acquired from the State will become part of the Federal reservation or of the land utilization project to which they may be contiguous or within the exterior boundaries of which they may be situate. They will be administered by the Secretary having jurisdiction of such reservation or project and will be subject to the laws, rules and regulations applicable thereto; except that lands becoming part of a national forest through an exchange of public lands of the United States shall be subject to the provisions of the act of February 1, 1905 (33 Stat. 628, 16 U.S.C. 472), in respect to the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying or patenting of lands reserved from the public domain.

(d) *State lands acceptable to United States and United States lands subject to State selection.* State and United States lands subject to exchange are as follows:

(1) The State may offer any lands owned by the State which are contiguous to or situate within the exterior boundaries of any Federal reservation

under the jurisdiction of the Secretary of the Interior, whether national park or other type of reservation.

(i) In exchange for such lands the State may select any public or other United States lands in Minnesota of equal value whether under the jurisdiction of the Secretary of the Interior or under that of the Secretary of Agriculture.

(ii) In such exchanges the State's title to the offered lands will be accepted by the Secretary of the Interior. The United States title to the selected lands will be conveyed by the Secretary having jurisdiction of the lands conveyed; except that conveyances of public domain in national forests shall be made by the Secretary of the Interior as provided for by the act of February 1, 1905 (33 Stat. 628, 16 U.S.C. 472).

(2) The State may also offer any lands owned by the State and contiguous to or situate within the exterior boundaries of any Federal reservation which is under the jurisdiction of the Secretary of Agriculture whether national forest, land-use project under title III of the Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 522; 7 U.S.C. 1000–1029), or other type of reservation. In exchange for such lands the State may select lands as follows:

(i) Any United States lands in Minnesota of equal value which are under the jurisdiction of the Secretary of Agriculture and which he has statutory authority to convey otherwise on behalf of the United States.

Exchanges under this subdivision are under the jurisdiction of the Secretary of Agriculture and are not covered by this section.

(ii) Any United States public lands in Minnesota of equal value which are under the jurisdiction of the Secretary of the Interior, which he has statutory authority to convey otherwise on behalf of the United States, and which are either:

(*a*) Surveyed, unappropriated and unreserved except as provided by Executive Order No. 6964, dated February 5, 1935; or

(*b*) Situated in national forests. In exchanges under subdivision (i) of this subparagraph the State's title to the offered lands will be accepted by the Secretary of Agriculture and United States title to the selected lands will be conveyed by him. In exchanges under subdivision (ii) of this subparagraph the State's title will be accepted by the Secretary of the Interior and United States title to the selected lands will be conveyed by him.

(e) *Preliminary negotiations and informal application.* All preliminary negotiations relating to a proposed exchange under the act of December 7, 1942 (56 Stat. 1042) are to be conducted with the local representatives of the Department having jurisdiction over the Federal reservation or land-use project to which the offered lands may be contiguous or within the exterior boundaries of which they may be situated. The State should file with such representatives of the Government an informal application describing the lands to be conveyed by the State and the lands desired in lieu thereof. The lands selected in any one application should not exceed 6,400 acres and should be specifically described according to Government subdivision. Nothing less than a legal subdivision may be offered or selected except where the State or the Government does not own the entire legal subdivision in question or where only a portion of a legal subdivision offered is valuable for Federal purposes, or where the United States desires to retain ownership of some portion of a selected subdivision because such portion is chiefly valuable for Federal purposes.

(f) *Reservations and conditions; examination and appraisal.* (1) Conveyances of offered and selected lands in exchanges under this act may be made subject to such reservations and conditions as the State of Minnesota and the United States respectively may severally prescribe. Such reservations and conditions must receive due consideration in the determination of the value of the lands for exchange purposes.

(2) The informal application for exchange should show in detail every reservation, easement or condition previously made or to be made by the State regarding the offered lands and should also show the reservations, easements or conditions regarding the selected lands which are to be made by the United States and which are acceptable to the State.

(3) To meet the requirements of the law that the lands exchanged be of equal value, both the offered and the selected lands will be examined and appraised in the field by the proper representatives of the Government. If such examination discloses inequalities of value the State will be so advised and opportunity will be afforded for adjustments which will bring the exchange within the provisions of the law. Where joint examinations and appraisals by representatives of both Departments and the State are necessary, arrangements therefor may be made by the representatives of the Departments.

(4) When the representatives of the State and of the United States shall have reached a tentative agreement regarding values, the State Director will transmit a copy of the report of examination and appraisal to the Bureau of Land Management in cases in which the Department of the Interior has jurisdiction over the selected lands or is to have jurisdiction over the offered lands. But in cases in which such jurisdiction is or is to be in the Department of Agriculture the authorized officer will send the report to the appropriate representative of that Department.

(g) *Procedure after determination that the exchange will be in the public interest.* When, in cases in which the selected lands are under the jurisdiction of the Secretary of the Interior or in which the offered lands are to be accepted by him, it has been determined to the satisfaction of the Secretary of the Interior, and to that of the Secretary of Agriculture as well when the interests of both Departments are affected, that the exchanges sought will be in the public interest and that the value of the selected lands does not exceed that of the offered lands, the Bureau of Land Management will notify the State officials that they may file in the Bureau of Land Management a formal application for such exchange.

(h) *Formal application together with deed, abstract, certificates, and statements.* The formal application should be filed in triplicate in the Bureau of Land Management by the proper State official. It should state under what act or acts it is made. It should describe the offered and the selected lands and should detail the desired reservations and conditions as prescribed in paragraphs (e) and (f) of this section, respectively. It should be accompanied by supporting documents as follows:

(1) A certificate by the selecting agent that the selection is made under and in pursuance of the laws of the State; that the selected lands are unappropriated and not occupied, claimed, improved or cultivated by any person adversely to the State; and that their value does not exceed that of the offered lands.

(2) A certificate by the selecting agent that the State has not tendered the offered lands as a basis for any other selection or exchange; that the State is the owner of the offered lands and that there is no outstanding instrument or entry of record impairing its title; said certificate also to state under what law the State acquired title from the United States; whether the State ever alienated the lands; and if so in what manner and under what legal authority the State reacquired ownership thereof.

(3) A corroborated statement relative to springs or water holes on the selected lands, in accordance with the regulations in §§2321.1–1 to 2321.1–2.

(4) A duly executed but unrecorded deed to the offered lands.

(5) A duly authenticated abstract of title to said offered lands in cases in which said lands were ever held in private ownership and were acquired by the State from such sources.

(i) *Deed of conveyance of base lands.* The deed of conveyance must be prepared in accordance with the laws of the State of Minnesota governing the conveyance of real property and must convey to the United States all right, title and interest in and to the offered lands. It should recite that it is made "for and in consideration of the exchange of certain lands as authorized by the Act of December 7, 1942 (52 Stat. 1042)." It must be accompanied by a certificate of the proper State officer showing that the officer executing the conveyance was authorized by the law of the State to do so, that at the time the conveyance was executed the title was in the State and that the offered lands have not been sold or otherwise encumbered by the State.

(j) *Abstract of title.* The abstract of title must show all matters which are of record in the county where the offered lands lie and which in any manner affect the title thereto.

(k) *Authentication required; certificates; taxes.* (1) The certificate of authentication of the abstract must be signed by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county under his official seal or by an abstracter or an abstract company approved by the Bureau of Land Management in accordance with § 1863.5 of this chapter. The certificate must show that the title memoranda are a full, true, and complete abstract of all matters of record or on file in the appropriate office or offices of the county or counties in which the offered lands are situate, including but not limited to all conveyances, mortgages, liens, or other encumbrances, judgments against the various grantors, mechanics liens, lis pendens, or other instruments affecting in any manner the title to the offered lands and required by law to be filed with the recording officers.

(2) The custodian of the tax records must certify that all taxes and drainage charges that have been levied or assessed against the lands or that could operate as a lien thereon have been fully paid and that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. He must also certify as to any tax lien which exists thereon even though at the date of the execution of the deed such tax may not yet have been assessed or have become due or payable.

(l) *Title insurance.* Title insurance issued by a company which is acceptable to the Department of the Interior may be offered in lieu of an abstract of title, provided the policy is free from conditions and stipulations not agreeable to the Department.

(m) *Execution and filing of petitions for classification.* When the State desires public domain lands affected by Executive Order No. 6964 issued February 5, 1935, but otherwise unreserved, its application will be subject to the regulations relating to the classification of lands and opening them to selection as prescribed in Subpart 2411.

(n) *Publication and proof.* Within 30 days from the filing of the formal application for exchange the State will begin publication of notice thereof at the State's expense in some newspaper or newspapers designated by the Bureau of Land Management and having a general circulation in the county or counties in which the offered lands, and the lands selected are situated. The notice must be published once each week for four successive weeks. It should describe the offered and the selected lands in terms of legal subdivisions and state that the purpose of the notice is to afford to all persons claiming the selected lands or having bona fide objections to the proposed exchange an opportunity to file their protests in the Bureau of Land Management, accompanied with a showing that they have served a copy of such protest upon the State. Proof of publication will consist of a statement made by the publisher or foreman or other proper employee of the newspaper and showing the dates of publication and a copy of the published notice.

(o) *Action by Bureau of Land Management.* (1) The Bureau of Land Management will examine the proof of publication and will consider and act upon any protest filed against the exchange. If no protest be filed within 30 days from the date of the first publication of the notice and if it be found that all requirements have been met and that the State is entitled to the exchange sought, the Bureau of Land Management will return to the State the State's deed of conveyance to be recorded and the abstract of title to be extended to the date of the recordation of the deed, both documents to be retransmitted to the Bureau of Land Management within 30 days from the State's receipt thereof.

(2) If upon such return of the deed and the abstract all be found regular and in conformity with the law and if there be no objections, title to the offered lands will be accepted and United States patent will issue for the selected lands if they are under the jurisdiction of the Secretary of the Interior or under his authority to convey.

(3) Notice of additional requirements, of rejection or of other adverse action will be given and the right of appeal, review or rehearing will be recognized in the manner prescribed by Appeals and Contests, Parts 1840 and 1850 of this chapter.

(p) *Deed and abstract to be returned if selection is rejected or canceled.* Should the application for exchange be finally rejected or the selection for any reason be canceled, the unrecorded deed and the abstract of title will be returned to the State.

(56 Stat. 1042)

§ 2244.7–4 California.

(a) *Authority.* Under the provisions of the act of June 29, 1936 (49 Stat. 2026), the State of California, with the approval of the Director, Bureau of Land Management, and under rules prescribed by the Secretary, may exchange lands patented under this act with a reservation of minerals to the United States, for privately owned lands within the area described of approximately equal value, containing the natural features sought to be preserved by the act. The lands to be acquired by the State through such exchange will be subject to the same conditions and reservations prescribed by said act, including the reversionary clause.

(b) *Application.* (1) A proposal for an exchange desired to be made by the State in accordance with these provisions of the act must be submitted to the Bureau of Land Management for consideration. Such a proposal for exchange should be filed in the appropriate land office together with a statement by the agent of the State showing that the lands patented to the State under said act and those desired to be acquired by the State in exchange, are of approximately equal value, and that the tracts to be acquired contain characteristic desert growth and scenic or other natural features desired to be preserved as a part of the California State park system.

(2) The proposal for exchange should be in the form of a joint application signed by the proper State official and by the owner of the land which the State desires to acquire in exchange, definitely describing by legal subdivisions of the Government surveys the lands relinquished by the State and those desired by the State in exchange therefor. Such joint application should be accompanied with a deed or reconveyance to the United States of the tract patented to the State under the act of June 29, 1936 (49 Stat. 2026), and with a deed of conveyance to the United States from the owner of the tract desired by the State in exchange, such deeds to be duly executed in accordance with the laws of the State, and both deeds to be unrecorded. There should also be filed a certificate by the proper State officer and a certificate by the county recorder showing no encumbrances of the land reconveyed by the State to the United States.

(c) *Abstract of title.* There must be filed a duly authenticated abstract of title to the tract conveyed to the United States and desired by the State in exchange, showing title to such land in the party conveying to the United States. The certificate of authentication of the abstract must be signed by the recorder of deeds under his official seal and must show that the title memorandum is a full, true, and complete abstract of all matters of record or on file in his office, including conveyances, mortgages, or other encumbrances. The custodian of tax records must certify that all taxes levied or assessed against the land or that could operate as a lien thereon, have been paid in full, and that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. The absence of judgment liens or pending suits against the grantor, which might affect the title to the land, must be shown by the official certificates of the clerks of the courts of record whose judgments under the laws of the United States or of the State constitute a lien on the land conveyed. Such abstract may be authenticated by an abstractor or abstract company satisfactory to the Bureau of Land Management, as provided in §1863.5 of this chapter.

(d) *Reports as to values of lands involved in exchange; fees and publication not required.* (1) A report will be made by the Bureau of Land Management as to the comparative values of the lands involved, those relinquished by the State and those desired by the State in lieu thereof and a report will be requested by the Bureau of Land Management from the National Park Service as to the value for park purposes of the lands desired by the State.

(2) Publication of notice of the proposed exchange will not be required and payment of fees will not be required in connection therewith.

(e) *Deeds to be returned for recording and abstract for completion; patents.* (1) If all be regular and the reports be satisfactory, the proposed exchange will be approved. Upon the approval of the exchange the deeds of conveyance will be returned for recording, and the abstract of title to be brought down to show such recordation.

(2) Upon the receipt in the Bureau of Land Management of the recorded deeds, a patent will be issued to the State for the tract desired in exchange, such patent to contain the mineral reservation and the forfeiture provision prescribed by the act of June 29, 1936 (49 Stat. 2026), and as contained in the patent issued to the State for the lands originally selected. A patent also will be issued to the party exchanging with the State for the tract reconveyed by the State to the United States.

(R.S. 2478; 43 U.S.C. 1201)

§ 2244.8 Reclamation exchanges.

§ 2244.8–1 Under Act of March 4, 1915.

(a) *Applications for exchange.* The act of March 4, 1915 (38 Stat. 1215; 43 U.S.C. 447), provides for the exchange of lands included in pending entries, for other lands in the same project, under certain conditions. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and a statement by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

(b) *Conditions permitting exchange.* The act of March 4, 1915, permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the Department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2244.8–2 Under other acts.

Other exchanges within reclamation projects, under certain conditions, have been authorized, as indicated below:

(a) The act of August 13, 1953 (67 Stat. 566; 43 U.S.C. secs. 451–451k), provides for the exchange of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(b) Section 44 of the act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c) authorizes exchanges of unpatented entries and private lands for other public lands within the same project or any other Federal reclamation project.

(c) Departmental orders of May 10, 1922 and July 31, 1924, permit the exchange of unpatented and patented land and water-right entries under the act of January 25, 1917 (39 Stat. 868) in Part One, Mesa Division, Yuma Irrigation Project, Arizona.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2244.9 Other exchanges.

§ 2244.9–1 O and C lands.

(a) *Authority.* The act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior, in his discretion, in the administration of the act approved August 28, 1937 (50 Stat. 874), to exchange any land formerly granted to the Oregon and California Railroad Company, title to which was revested in the United States pursuant to the provisions of the act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Company pursuant to the provisions of the act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, or State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The act further provides that all lands and timber secured by the United States pursuant to any such exchange shall be administered in accordance with the same provisions of law as the revested and reconveyed lands exchanged therefor, and that parties to the exchange may make reservations of easements, rights-of-way, and other interests and rights. Under this legislation the Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations as may be necessary to carry out the provisions of the law.

(b) *Policy*—(1) *Forest.* The act of August 28, 1937 (50 Stat. 874), laid the foundation and framework of a new forest policy for the revested and reconveyed Oregon grant lands. This measure provides for the conservation of land, water, forest, and forage on a permanent basis; the prudent utilization of these resources for the purposes to which they are best adapted; and the realization of the highest current values consistent with undiminished future returns. It seeks, through the application of the policy of sustained-yield management, to provide perpetual forests which will serve as a foundation for continuing industries and permanent communities.

(2) *Exchange.* (i) Since the exchange authority of the act of July 31, 1939, has been provided for the specific purpose of promoting the policy of sustained-yield management laid down for the Oregon lands, it is essential that the formulation of tentative sustained-yield unit plans precede the actual carrying out of the exchange program. This does not mean that the planning of the exchange program will be held in abeyance pending the final establishment of sustained-yield management units, since it is expected that exchange plans will be outlined concurrently with the setting up of sustained-yield units and an action program initiated as soon as the boundaries thereof are fully determined.

(ii) It may be broadly stated that the lands and timber to be acquired under authority of the act of July 31, 1939, should be of a character and so located that the acquisition thereof will promote the conservation principles laid down by the act of August 28, 1937. Lands and timber which will be disposed of by exchange should be of such a type and so located that the transfer of these resources to private ownership will not interfere with the carrying out of a regional program of cooperative sustained-yield forest management in western Oregon.

(iii) Generally speaking, exchanges will not be authorized where the exchange would create a serious disturbance of existing economic conditions; or in cases where the exchange would operate materially to reduce the revenues which should accrue to the counties under authority of the act of August 28, 1937. Neither can approval be given to the exchange of lands which would prevent the free and ready access of the Government in the development of the resources under its jurisdiction, nor the passing of title to which would in any way interfere with the policy of sustained-yield forest management which governs the administration of the O. and C. lands.

(iv) Land exchange applications will be accepted and given consideration as occasion may arise. However, the right is reserved by the Government to reject any and all applications. Applications may be received upon approval of this part; but no preference in action will be granted because of priority of application. Upon the establishment of sustained-yield units the Government will consider all applications for exchange within the boundaries thereof and accept those which are found most advantageous in attaining the primary objectives of such units.

(c) *Objectives.* Concisely stated, the primary objectives sought by the act of July 31, 1939, include the following:

(1) Simplification of administration, improvement, and protection through the consolidation of holdings and the reduction of diversified small ownerships.

(2) The development of a balanced distribution of age classes of timber with a view to promoting the policy of sustained-yield forest management provided for in the act of August 28, 1937.

(3) The establishment of natural cooperative sustained-yield management units, with a view to sustaining dependent industry, dependent labor and dependent communities.

(4) The effective administration of cooperative forest units.

(5) Aid in establishing economic operating units for combined agricultural and grazing enterprises, where

such enterprises appear to provide the most desirable use of the land.

(6) The protection of recreational and other values against impairment or destruction.

(d) *Lands subject to exchange.* (1) The Oregon grant lands which are subject to exchange aggregate about 2.2 million acres, and are located in 18 counties in western Oregon. The O. and C. lands are intermingled with private holdings, State lands, unreserved public domain, and lands reserved for national forests and national parks. Where the grant lands are intermingled in checkerboard arrangement with other public lands, important administrative problems on both would be simplified by segregating them from each other and concentrating them in solid blocks. Conflicts in land use which exist in certain localities may be solved by rational land use zoning and application of the exchange procedure to segregate the lands according to the dominant use.

(2) Mineral lands may not be selected in exchange proceedings hereunder.

(3) An applicant under the exchange act selecting Coos Bay Wagon Road grant lands must offer as base in lieu thereof lands situated in the same county as the lands selected. (See act of May 24, 1939, 53 Stat. 753.) The advantageous consolidation of the holdings of lands of the United States, required under the exchange act, may be with either the reconveyed or revested lands, or with both.

(e) *Procedures*—(1) *Applications*—(i) *Qualifications of applicants.* Applications may be filed by the State of Oregon, by the several counties thereof either wholly or partially within the former limits of the grants, by citizens of the United States, by associations of such citizens, or by corporations organized under the laws of the United States or any State, Territory, or district thereof, authorized under its charter to own and sell real property and authorized to do business in the State of Oregon. Evidence of citizenship or of incorporation must be filed with the application, and when the applicant is a corporation a certified copy of the order or direction of the board of directors, or other governing body, to effect such exchange should accompany the application.

(ii) *Contents.* (*a*) Applications, in duplicate, should be addressed to the Director of the Bureau of Land Management and filed in the land office having jurisdiction over the selected lands, and should set forth, by legal subdivisions of the public land surveys, the lands offered to the Government and the lands selected in exchange therefor. The application should contain the full name and postoffice address of the applicant; state that the applicant is legally capable of consummating the exchange; that he is the owner of the lands offered in exchange; that such offered lands are not the basis of another selection or exchange; state whether any reservation or easements, rights of use, and other interests and rights in or to the offered lands are desired, and what use thereof is contemplated. It should also show the reservations or easements which, if made by the United States, on the selected land will be acceptable to the applicant.

(*b*) An application by the State should be accompanied by a certificate of the selecting agent showing that the application for exchange is made under and pursuant to the laws of the State and that the State is the owner of the lands offered in the proposed exchange. In the case of an application for exchange by a county, there should also be furnished a certificate of the proper officer or officers of the county, under seal, to the effect that the application is made under and pursuant to the laws of the State.

(*c*) The application must be accompanied by a statement by the applicant or by some credible person who is familiar with the character, condition and value of the selected lands and the character, condition and value of the lands offered in exchange. This statement must be in duplicate. The statement must specifically describe by subdivision, section, township and range, the lands offered to the Government and the lands selected in exchange therefor, and show the following: whether there is within the limits of any of the selected land any known deposit of coal, or any lode or placer deposit, oil, or other valuable mineral; whether said land contains any salt springs or known deposits of salt in any form sufficient to render it chiefly valuable therefor; whether any portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; whether said land is essentially nonmineral in character and has upon it any mining or other improvements; that the selected lands are unappropriated and are not occupied, claimed, improved or cultivated by any person adversely to the applicant; and give as full data as are available concerning the character, and the amount, kind, and value of timber upon each smallest or forty-acre subdivision of the lands offered in exchange. This statement must also show that the lands offered and the lands selected are approximately of equal aggregate value, consideration being given to any reservations or easements which may be made by the applicant or the United States. The values of both offered and selected lands are to be determined by the authorized officer of the Department of the Interior. The application must be accompanied with a corroborated statement relative to springs and water holes on the selected lands, in accordance with existing regulations pertaining thereto §§ 2321.1–1 and 2321.1–2. Evidence of citizenship, or of incorporation, must be filed with the application.

(iii) *Costs and fees.* The applicant shall agree to pay the cost of publishing notices of the exchange. Filing fees must be paid by the applicant at the rate of $2.00 for each 160 acres, or fraction thereof, of the lands selected. The act provides that no fee shall be charged in applications filed by the State of Oregon or any county thereof, except one-half of the cost of publishing notice of the proposed exchange.

(2) *Evidence required.* (i) The applicant shall, upon request, submit proof of publication of notice of the exchange, a deed of conveyance of the offered lands, and in all cases, except as hereinafter provided, an abstract of title showing that at the date of execution of the deed valid title to the lands covered by such deed was vested in the party making the conveyance. The abstractor's certificate must show that the lands as conveyed were free from judgments or mortgage liens, pending suits, taxes, tax assessments, or other encumbrances. If such certificate does not cover taxes and tax assessments, the applicant must furnish a certificate by the proper official of the county in which the lands are situated showing that all taxes or assessments levied or assessed against the lands conveyed to the United States, or that could operate as a lien thereon, have been duly paid; whether there is a tax or assessment due on such lands or that could operate as a lien thereon but which tax or assessment is not yet payable and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States. Such abstract must be prepared and authenticated by an abstractor or by an abstract company acceptable to the Bureau of Land Management, and must show that the title memoranda contained therein are a full, true, and complete abstract of all matters of record or on file in the offices of the recorders of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, suits, pending suits, judgments, liens, lis pendens, or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the offices of the clerks of courts of record affecting in any manner whatever the title to the lands to be conveyed to the United States.

(ii) Where the State is the applicant and the offered lands were acquired by grant from the United States, the State may furnish in lieu of an abstract of title a certificate of the proper State officer showing that the offered lands have not been sold or encumbered by the State, and a certificate by the Recorder of Deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way encumber title to the offered lands is of record or on file in his office; but in all cases of lands offered by the State which have been held in private ownership and were acquired by the State from such source, including cases where any of the lands offered by the State have been sold by it and title again acquired by it the State will be required to furnish an abstract of title.

(iii) In lieu of the abstract of title the applicant may furnish a title report, preliminary policy of title insurance, or certificate of title with respect to the offered lands issued by a solvent and properly qualified title insurance company which is acceptable to the Department of the Interior. Such title report, preliminary policy, or certificate (a)

shall contain a statement to the effect that, upon approval of the exchange and the recording of the deed of conveyance to the United States, the insurance company will issue a final policy of title insurance or a certificate of title, as the case may be, in an amount not less than the value of the offered lands as determined by the Bureau of Land Management, guaranteeing valid title to the offered lands in the United States as of the date such deed is recorded, and (b) shall set forth all of the conditions and stipulations of such proposed final policy or certificate. A policy of title insurance or a certificate of title when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby. (Opinion of the Solicitor, August 14, 1934, M. 27768; § 1863.5 of this chapter.)

(iv) Where the offered lands have been acquired by the applicant through tax foreclosure proceedings, it must be shown that the foreclosure was a matter of judgment and decree of the proper court; that the sheriff or other proper official has issued a deed based upon the judgment and decree of the court, and that the period of time provided by the laws of the State of Oregon within which to bring action, suit, or proceeding of whatever kind or nature, for the purpose of determining the validity of the sale, has expired. As part of the abstract of title to the offered lands, the applicant shall submit the foreclosure proceedings in full.

(3) *Publication and posting.* The publication notice must give the name and postoffice address of the applicant, serial number and date of the application, act under which application is filed, describe both the offered and selected lands in terms of legal subdivisions of the public land surveys, and state that the purpose of the notice is to permit all persons claiming the offered or selected lands or having bona fide objections to such exchange an opportunity to file their protests or other objections in the land office within 45 days from the date of the first publication, together with evidence that a copy of such protest or objection has been served upon the applicant. The cost of publication of the notice must be at the expense of the applicant, unless such applicant is the State of Oregon or any county thereof, in which case each newspaper will collect one-half of the cost of publication from the applicant and submit proper vouchers to the United States for the remainder. The notice must be published once a week for four consecutive weeks in some designated newspaper of general circulation in the county or counties in which are situated the lands offered to the United States, and in the same manner in some like newspaper published in any country in which are situated any lands selected in exchange. In the event the newspaper is a daily, the publication should be made in the Wednesday issue thereof. Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published.

(f) *Deed of conveyance.* The deed of conveyance to the United States must be executed and acknowledged in accordance with the laws of the State, and must contain covenants of general warrantly except where the grantee is prohibited by law from executing such a conveyance. The United States of America should be named as grantee and the deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by the act of July 31, 1939 (53 Stat. 1144)." Where the deed of conveyance is by a private corporation, it should be recited in the instrument of transfer that the deed was executed pursuant to an order or by the direction of the board of directors or other governing body, and a copy of such order or direction must accompany such instrument of transfer and both should bear the impression of the corporate seal.

(g) *Taxes.* In case taxes have been assessed or levied on lands conveyed to the United States, and such taxes are not due and payable until some future date, the applicant in addition to the certificates above required, relating to taxes and tax assessments, may make a deposit with the Bureau of Land Management of at least twice the amount of the taxes for the preceding year with evidence as to the amount of the taxes for such year, or may furnish a bond with qualified corporate surety for such sum, in order to indemnify the United States against loss for the nonpayment of the tax so assessed or levied.

(h) *Action by the Bureau of Land Management; additional evidence required.* (1) If the deed and abstract of title, title report, preliminary policy of title insurance, or certificate of title have been found to be regular and to conform with the law and regulations, and if there are no objections, the manager will transmit them to the applicant who shall thereupon affix to the deed and cancel such revenue stamps as are required by law, and record the deed in accordance with the laws of the State. The applicant shall also have the abstract of title brought down to the date of the recording of the deed, showing that at such date the title to the offered land is vested in the United States or, if a title report, preliminary policy of title insurance, or certificate of title was submitted in lieu of an abstract of title, the applicant shall obtain a final policy of title insurance or a final certificate of title from the company issuing such report, preliminary policy of title insurance or certificate of title, which policy or certificate shall be brought down to the date of recording of the deed, showing that at such date the title to the offered lands is vested in the United States. Upon submission of the recorded deed and the amended abstract of title, title insurance policy or certificate of title, if all is regular, title will be accepted to the offered lands and patent will issue for the lands selected in exchange.

(2) Notices of additional requirements, rejection, or other adverse action will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed in Parts 1840 and 1850 of this chapter. Protests against exchanges should be filed in the land office.

(3) If the application for exchange be finally rejected for any reason, the abstract of title will be returned, and the applicant will be advised of his right to apply for a quitclaim deed under existing law for the lands conveyed to the United States.

(i) *Conveyed lands.* All lands conveyed to the United States pursuant to the act of July 31, 1939 (53 Stat. 1144), and under this section shall upon acceptance of title, become a part of the revested and reconveyed lands and shall be managed, as a part of such lands, in the manner prescribed by the act of August 28, 1937 (50 Stat. 874).

(Sec. 2, 53 Stat. 1145)

Subpart 2245—Alaska Housing Act

AUTHORITY: The provisions of this Subpart 2245 issued under 54 Stat. 1191; 48 U.S.C. 353 note.

§ 2245.0–2 Objectives.

(a) The Department of the Interior has been gravely concerned about the critical housing shortage in Alaska, which has been a major obstacle to the proper development of the State and to the economic life of its population. The act, which seeks to ameliorate this dire shortage, will be liberally construed to foster the development of the urgently needed housing program.

(b) In order to effectuate the objectives of the act, prompt consideration will be given to all requests filed under the regulations in this part. To facilitate prompt action, the requests should contain complete information and data required by § 2245.1–1.

(c) That lands are withdrawn in aid of a function of the Department of the Interior, or for shore space, will not preclude the disposal of such lands under the act if the lands are found to be in excess of the needs of this Department. However, lands situated in national parks and monuments, fish and wildlife refuges, and Indian lands will not be made available for disposal under the act unless a positive showing is also made of the unavailability of other lands in the general area suitable for the desired purpose. Requests will not be approved until such time as the information and data required by this Subpart 2245 are furnished to the manager of the proper land office.

(d) Except to the extent previously indicated, the use of lands under the act, if not already appropriated under the public-land laws or actually used by Federal agencies, will be regarded as a higher use than the other uses authorized by the public-land laws.

(e) Requests should be made only in connection with specific housing projects, and may be made before the plans of construction have been completely formulated. However, requests should not be made until the Authority has determined that it will construct a specific

project on the lands, the number and type of housing units to be included in the project, and the acreage and area needed for such project.

(f) Where lands are affected by a permit granted to another department or to any agency thereof, the consent of such department or agency to the proposed conveyance is required before a request may be approved.

§ 2245.0–3 Authority.

Section 6 of the Alaska Housing Act of April 23, 1949 (63 Stat. 60; 48 U.S.C. 484c) authorizes any executive department or agency of the Federal Government to sell, transfer, and convey to the Alaska Housing Authority at fair value, as determined by such department or agency, for use under that act, all or any right, title, and interest in any real or personal property under the jurisdiction of such department or agency which it determines to be in excess of its own requirements, notwithstanding any limitations or requirements of law with respect to the use or disposition of such property. The section provides that the authority conferred thereby shall be in addition to and not in derogation of any other powers and authorities of such department or agency.

§ 2245.0–5 Definitions.

As used in this Subpart 2245, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) The "act" means the Alaska Housing Act of April 23, 1949 (63 Stat. 60; 48 U.S.C. 484c).

(b) "Authority" means the Alaska Housing Authority.

(c) "Property interest" means the title to or any other interest in land, including easements and leaseholds.

(d) "Instrument of transfer" includes a patent, deed, lease, or other instrument transferring a property interest.

§ 2245.1 Procedures.

§ 2245.1–1 Request by Authority for transfer of property interest.

Each request by the Authority for the transfer to it of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior in Alaska should be addressed to and filed with the manager, should be in duplicate, and should contain the following:

(a) A description of the land, if surveyed, by legal subdivision, specifying section, township, and range; unsurveyed lands should be described by metes and bounds with a tie to a corner of the public land surveys if within two miles; otherwise, a tie should be made to some permanent topographic feature and the approximate latitude and longitude should be given when practicable.

(b) If the application includes unsurveyed lands, a statement that the Authority has plainly indicated on the ground the corners of the land applied for by setting substantial posts or heaping up mounds of stones at each corner.

(c) A statement showing whether there are any hot springs or other springs having waters possessing curative properties upon any legal subdivision of the land requested, if the land is surveyed; and if the land is unsurveyed, whether any portion of the land is within an area of one-quarter of a mile from such spring or springs.

(d) A statement identifying the proposed project, the acreage required, and showing the number and type of housing units to be included therein, and the desirability or suitability of the site for the particular project.

(e) A statement showing the need for the particular land and the property interest therein requested by the Authority.

(f) The date construction of improvements on the land is contemplated.

(g) A statement showing whether any portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska, or whether the land is occupied, improved, or appropriated by any person claiming the same other than the Authority.

§ 2245.1–2 Publication of proposed transfer.

(a) The manager will require the Authority to publish at its expense, in a newspaper of general circulation in the land district in which the land is situated, a notice stating that a request has been made by the Authority to acquire an interest (describing it) in certain lands (describing them) under the act, for housing purposes, and that the purpose of the notice is to give persons claiming an interest in the lands, or having bona fide objections to the transfer, an opportunity to file with the manager within 30 days after the date of the first publication a protest, together with evidence that a copy of the protest has been served on the Authority. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue; if a weekly, for four consecutive issues; and if a semi-weekly or tri-weekly, in any of the issues on the same day for four consecutive weeks. The notice will be posted during the entire period of publication in the land office for the district in which the lands are situated. The manager will also require the Authority to keep a notice posted on the land throughout the entire period of publication. No transfer will be made until proof of publication and posting of the notice has been filed with the manager.

(b) After the Authority has made payment for the lands and complied with all of the requirements made by the manager, the Director, Bureau of Land Management, will direct the issuance of the instrument of transfer.

(c) If unsurveyed public lands are included in a request, patent therefor cannot be issued until the lands have been surveyed.

§ 2245.2 Instrument of transfer.

Each instrument of transfer made under this Subpart 2245, of fee title or lesser estate in the land shall contain:

(a) The covenants, terms, and conditions requested by the Authority, as well as those required for the protection of the Department of the Interior, or any agency thereof.

(b) A reservation to the United States of the oil, gas, and other mineral deposits in the lands, together with the right of the United States, its agents, representatives, lessees or permittees, to prospect for, mine, and remove the same, under such regulations as the Secretary of the Interior may prescribe.

PART 2250—SPECIAL AREAS

Subpart 2251—Choctaw-Chickasaw

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Subpart 2251—Choctaw-Chickasaw

AUTHORITY: The provisions of this Subpart 2251 issued under sec. 1, 69 Stat. 445; 43 U.S.C. 1102.

§ 2251.0–3 Authority.

(a) The act of August 3, 1955 (69 Stat. 445), authorizes the Secretary of the Interior to provide for the management and disposition of any interest of the United States in those lands which were reconveyed to the United States by deeds of conveyance executed on November 29, 1950 by the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation or which have been or may be reconveyed to the United States by any further or supplemental conveyances made under the authority of the Interior Department Appropriation Act of June 28, 1944 (58 Stat. 463, 483), the joint resolution of June 24, 1948 (62 Stat. 596), and the First Deficiency Appropriation Act of May 24, 1949 (63 Stat. 76, 84). Such reconveyed lands are referred to in this Part as "Choctaw-Chickasaw lands" and the act of August 3, 1955 is referred to as "the act".

(b) The act of June 28, 1944 (58 Stat. 463, 483), declared the Choctaw-Chickasaw lands to be part of the public domain subject to the applicable public land mining and mineral leasing laws.

§ 2251.1 Disposal of surface fee.

Subject to the reservation of all rights of the United States to minerals in the lands and to the payment of the proportionate cost of any survey which may be necessary to describe properly any lands to be disposed of under the act, Choctaw-Chickasaw lands are subject to disposal as follows:

(a) Private sale of tracts to any person having a legal or equitable interest therein under the regulations of § 2251.1–1.

(b) Private sales to occupants under the regulations of § 2251.1–2.

(c) Public sale of tracts and private sale of tracts unsold after offer at public auction, under the regulations of § 2251.1–2.

(d) Private sale of tracts under the provisions of the act of June 4, 1954 (68 Stat. 173; 42 U.S.C. 869) and the regulations thereunder (Subpart 2232 of this chapter).

(e) Conveyance to local governing bodies of tracts set apart for streets, alleys, or other public purposes under the regulations of § 2251.1–4.

§ 2251.1–1 Sales to persons claiming a legal or equitable interest.

(a) Subparagraph 2(a)(2) of the act authorizes the Secretary of the Interior to relinquish any tract of Choctaw-Chickasaw lands to any person having a legal or equitable interest therein.

(b) To qualify under subparagraph 2(a)(2) of the act, a claim of legal or equitable interest must rest on uncertainty as to the title to the tract applied for, resulting from such things as inadequate surveys, judgments, decrees, or orders of condemnation in court proceedings in which the United States did not consent to be a party to the suit, or otherwise. No such claim will be recognized if it is based solely on a lease or permit from the Bureau of Land Management or its predecessors in interest to the lands.

(c) Any individual, group, or corporation which believes it has a legal or equitable interest in one or more tracts of Choctaw-Chickasaw lands may make an application therefor by filing, in duplicate, an application captioned "Claim of legal or equitable interest in Choctaw-Chickasaw lands" with the Manager of the land office at Santa Fe, New Mexico. No particular form of application is required but it must be typewritten or in legible handwriting and signed by the applicant. Every application must be accompanied by a filing fee of $10 which will be nonreturnable. The application must contain a description of the land claimed sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. It must contain the full name and full post-office address of the claimant. It must also contain a full statement showing the basis for the claim of legal or equitable interest in the lands. The applicant may be called upon to submit documentary or other evidence in support of his claim. Valuable documents submitted by the applicant will be returned to him.

(d) The applicant will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the land office at Santa Fe, New Mexico, their objections to the issuance of a relinquishment under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication had been had for the required time.

(e) The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than a total of $10.

(f) Applicants will be required to make payment of the sale price of the land and for the cost of survey, if any, within the time stated in the request for payment.

§ 2251.1–2 Sales to occupants.

(a) Subparagraph 2(b) of the act authorizes the Secretary of the Interior, in selling any tract of Choctaw-Chickasaw

lands, to grant a preference right of purchase to any occupant of the tract who has, or whose predecessors in interest have, lawfully and continuously occupied the tract for home, business, or school purposes since April 30, 1949, or earlier.

(b) Before offering any tract at public sale, the land office manager at Santa Fe, New Mexico, will give any such occupant an opportunity to purchase the tract at its fair market value as appraised by the authorized officer of the Bureau of Land Management. In the event the occupant elects to purchase the tract, he will be required to comply with the requirements of § 2251.1–1 (d) and f). In the event the occupant elects not to purchase the tract, the land office manager will give the occupant an appropriate period within which the occupant, in the occupant's discretion, may remove improvements on the tract constructed by him or his predecessors in interest or elect to receive compensation for such improvements from the successful purchaser of the tract in an amount equal to the appraised value of the improvements as determined by the authorized officer of the Bureau of Land Management.

§ 2251.1–3 Public and subsequent private sales.

(a) Subparagraph 2(a)(1) of the act authorizes the Secretary of the Interior to sell tracts of Choctaw-Chickasaw lands at public sale to the highest responsible bidder, or at private sale.

(b) Upon request of any interested party or upon his own motion, the manager of the land office at Santa Fe, New Mexico, may subject to the regulations in this part, expose to sale at public auction tracts of Choctaw-Chickasaw lands at not less than their fair market value as appraised by the authorized office of the Bureau of Land Management.

(c) The manager will cause a notice of sale to be published and posted consistent with the requirements of Subpart 2243 of this chapter. The successful purchaser of a tract will be required to reimburse the Government for the cost of publication of such notices, or if more than one successful purchaser is involved, the several purchasers will be required to pay their proportionate share of such costs determined on an acreage basis.

(d) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. Bids may be made by the principal or his agent, either personally at the sale or by mail. Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. Sealed bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. In the event that two or more bids sent by mail are identical in amount, they will be considered in the award of the lands in the order of their receipt as shown by the hour and date noted on the envelope.

(e) At the close of bidding, owners in fee simple of lands contiguous to the offered tract, providing that they or their agents are present at the sale, will be granted a preference right of purchase by offering at the sale to meet the highest bid for such tract. In the event two or more preference claimants offer to meet the highest bid and in the absence of an agreement among them as to the award of the lands, the award will be determined through drawing.

(f) An awardee of a tract at public sale will be granted a reasonable time in which to pay the purchase price of the lands, the cost of publication, the cost of survey, if any, and the value of the improvements of the former occupant of the lands, if any, and if he is a preference claimant, to submit proof of his ownership in fee simple of lands adjoining the offered tract. Such proof must consist of (1) a certificate of the local recorder of deeds or an authorized abstracter, or (2) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at the date of the sale. After a case has been closed, the data filed pursuant to this section may be returned. In the event that the awardee does not submit within the time specified the amounts requested or the proof of ownership, the lands will be awarded under the same conditions to the drawee next in order, if any, or to the next highest bidder, if any.

(g) Lands remaining unsold after offer at public sale, for a period of one year after date of sale, will be available, at the discretion of the authorized officer of the Bureau of Land Management and at not less than the price at which they were appraised for the public sale, for purchase by the first qualified applicant who tenders to the Manager, Santa Fe Land Office, an amount equal to the price specified by the manager, the cost of publication, and if any, the cost of survey and the value of the improvements of the former occupant.

(h) Until a cash certificate has been issued, the authorized officer may at any time determine that the lands should not be sold, and no bidder or applicant for private sale shall have any contractual or other rights as against the United States, and no action taken will create any contractual right or obligation of the United States.

§ 2251.1–4 Tracts set apart for streets, alleys, or other public purposes.

(a) Subsection 3(b) of the act provides that upon the filing of an application by an appropriate local governing body within two years after the date of this part, the Secretary of the Interior may relinquish or convey by quit claim deed to such body, without compensation, the surface rights to any tract of the Choctaw-Chicksaw lands which, prior to the transfer of title to the United States, was set apart for streets, alleys, or public purposes, even though not legally dedicated for such purposes.

(b) No particular form of application is required. Applications, however, must be filed, in duplicate, and must contain the following:

(1) An accurate description of the lands requested to be conveyed.

(2) A reference to the action by means of which the lands were set apart for streets, alleys, or public purposes.

(3) A statement showing the authority of the applicant to act on behalf of the local governing body.

(c) Every application must be accompanied by a $10 filing fee which will be nonreturnable.

(d) No conveyance will be made under subsection 3(b) of the act unless the local governing body pays within the period specified by the Manager of the Land Office at Santa Fe, New Mexico, the cost of the survey of the lands, if any.

§ 2251.1–5 Leases and permits for nonmineral resources.

(a) Unless otherwise provided for by the regulations in this part, the Choctaw-Chickasaw lands will not be subject to lease or permit for the development and use of nonmineral resources except (1) where disposal of fee title to the tract, in the discretion of the authorized officer of the Bureau of Land Management, is not in the public interest, (2) where the public interest will be served by the issuance of a lease or permit having a term of not to exceed one year, or (3) where the public interest will be served by the issuance of a lease under the regulations of Subpart 2232.

(b) Leases and permits issued under paragraph (a)(2) of this section will be renewable in the discretion of the authorized officer of the Bureau of Land Management for periods not exceeding one year for each renewal.

(c) The authorized officer of the Bureau of Land Management, in his discretion, may specify the terms and conditions of leases and permits issued under paragraph (a) (1) and (2) of this section consistent with the policies and procedures of the Department of the Interior.

(d) Except for applications to lease under the regulations of Subpart 2232, no particular form of application is required. The applicant, however, must describe the lands desired and the purpose for which he desires them. Every application must be accompanied by a filing fee of $10 which will not be returnable.

§ 2251.2 Deeds; disposition of minerals.

(a) All deeds for lands disposed of under the act of August 3, 1955 (69 Stat. 445), will contain a reservation to the United States of all its rights to mineral deposits in the lands, together with the right to prospect for, mine, and remove them. Any minerals subject to the public land leasing laws so reserved to the United States may be disposed of to any qualified person under applicable laws and regulations, subject to such conditions as the authorized officer of the Bureau of Land Management deems necessary for the protection of the surface and other nonmineral values of the lands. Until rules and regulations are issued, reserved minerals other than those subject to the public land leasing

laws are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(b) All minerals in the Choctaw-Chickasaw lands, subject to the exception and qualifications in paragraph (a) of this section, are subject to the applicable public land mining and mineral leasing laws and the regulations thereunder (see Groups 3100 and 3400 of this chapter).

(c) Deeds for Choctaw-Chickasaw lands disposed of under the regulations in this part will contain any provision the authorized officer of the Bureau of Land Management deems necessary in order to protect the rights of the holders of existing interests in the lands, or to permit access to any of the lands in which the Federal Government retains an interest.

§ 2251.3 Disposal of materials.

Materials on the Choctaw-Chickasaw lands, other than minerals subject to disposal under the public land mining and mineral leasing laws, are subject to disposal under the regulations of Parts 3610 and 5460 of this chapter.

§ 2251.4 Rights-of-way.

Easements and permits for rights-of-way over the Choctaw-Chickasaw lands may be secured under the regulations of Subpart 2234.

§ 2251.5 Contributions and donations of money, services, and property.

(a) Section 6 of the act authorizes the Secretary of the Interior to accept contributions or donations of money, services, and property to further the provisions of the act.

(b) Contributions and donations may be offered to the Manager of the Land Office at Santa Fe, New Mexico.

(c) Amounts of money contributed in excess of their appropriate share of expenses as determined by the authorized officer of the Bureau of Land Management, will be refunded to contributors.

Subpart 2253—State Irrigation Districts

AUTHORITY: The provisions of this Subpart 2253 issued under R.S. 2478; 43 U.S.C. 1201. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 2253.0–3 Authority.

The act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630) empowers the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts theretofore or thereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which final certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

§ 2253.1 Procedures.

§ 2253.1–1 Application by a district for approval.

Any irrigation district desiring to obtain the benefits of the act of August 11, 1916, should file in the land office for the district within which the lands are situated an application, in duplicate, consisting of the following:

(a) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power-site, or other withdrawal); how much (percent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the Reclamation act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), or is pending, and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(b) Proof of organization.

(c) Evidence of water right and sufficiency of available water supply.

(d) Maps showing the project.

(e) Plans and specifications.

(f) Such data as may be necessary to a full understanding of the situation.

(g) All applications by State irrigation districts for approval under the act of August 11, 1916, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2253.1–2 Proof of organization.

A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

§ 2253.1–3 Evidence of water right.

If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to the act of August 11, 1916, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

§ 2253.1–4 Maps and details to be shown thereon.

(a) There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black India ink, letters corresponding to the status of the land, as follows:

(1) Privately owned land.

(2) Lands which have been entered but for which final certificate has not been issued.

(3) Lands withdrawn under the Reclamation Act.

(4) Lands otherwise withdrawn.

(5) Unentered public lands.

NOTE: If a tract of land appears to come within two of the designations, both letters should be used.

(b) Unless one-eighth of any smallest legal subdivision is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

(c) These tracings should be made on tracing linen with India ink. Three scales are permissible: 2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no

case should any one tracing be over 36 inches in width.

(d) The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system as well as cross sections, properly drawn to scale, of dams and canals.

(e) If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773). If, however, public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

§ 2253.1–5 Plans and specifications.

(a) If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

(b) If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

§ 2253.1–6 Complete data required.

As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the authorized officer all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required if the data stated upon the original application prove insufficient.

§ 2253.1–7 Statements and certificates on maps.

Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1. (See Appendix A.) They should also bear the statement of the district's chief engineer, in accordance with Form No. 2. (See Appendix A.) This certificate and statement should be inscribed upon the maps in India ink.

§ 2253.1–8 Application for right-of-way.

If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right-of-way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

§ 2253.2 Lands included.

§ 2253.2–1 Identification of unsurveyed lands.

Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

§ 2253.2–2 Lands in more than one land district.

Where the lands within the confines of the proposed irrigation district lie within the jurisdiction of more than one land office, it will only be necessary to file the data in duplicate in one of the land offices; a blueprint copy of the map and one copy of the statement, however, should be filed in the other land offices, together with a notice to the manager that the application, in duplicate, has been filed in the other land office (naming it).

§ 2253.3 Requirements when lands are to be claimed by Bureau of Reclamation.

(a) Section 3 of the act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773), provides as follows:

That upon the execution of any contract between the United States and any irrigation district pursuant to this Act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the Act entitled "An Act to promote the reclamation of arid lands," approved August 11, 1916: *Provided*, That no map or plan as required by section 3 of the said Act need be filed by the irrigation district for approval by the Secretary of the Interior.

(b) This section is construed as an amendment of the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), in that it makes unnecessary the filing of a map or plan of the district for the approval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the act of August 11, 1916.

(c) Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the act of August 11, 1916, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the act of August 11, 1916, filing a list thereof.

(d) In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approved plats of survey of the lands within such district, properly subject to designation under said act of August 11, 1916, and the approval of such a contract by the Secretary unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

(e) The Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the act of August 11, 1916. From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

(f) These lists should then be referred by the Bureau of Reclamation to the Bureau of Land Management with a view to the elimination of any lands not subject to entry, whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

(g) The Commissioner of the Bureau of Reclamation will furnish the Director of the Bureau of Land Management with two copies of all such contracts, together with two blue-print maps of the district.

§ 2253.4 Taxes and assessments.

(a) Where an irrigation district has been approved by the Secretary of the Interior the district must, after each assessment, file with the manager of the land office for the district within which the lands of the irrigation district are situated, an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form in compliance with the provisions of the State law and of this act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(b) Where contracts made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

§ 2253.5 Status of lands.

§ 2253.5–1 Status of lands within approved irrigation districts.

(a) For the purpose of entry, the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), and lands not so withdrawn.

(b) For the purpose of administration the lands within such a district may be

considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

(c) The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

§ 2253.5–2 Entries under the Reclamation Act.

(a) Lands within an approved irrigation district withdrawn under the act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

(b) When lands included in entries made under the act of June 17, 1902, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), and shall perfect the entry in the same manner required of an assignee under said act.

(c) The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the Reclamation Act.

§ 2253.5–3 Entry of lands unentered when tax or assessment was levied; section 5, act of August 11, 1916.

(a) Public lands within an approved irrigation district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

(b) Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

§ 2253.6 When tax title will not be recognized.

No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

§ 2253.7 Reentry of land covered by canceled entries; section 6, act of August 11, 1916.

(a) In case where any tract of entered land within an approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

(b) Entries for such land will be limited to 160 acres, as such lands come within the general description of "unentered" lands.

(c) It will be observed that as to such land the requirement as to payment of taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert-land law as in the first instance.

(d) If the application is not accompanied by this evidence the manager will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time he will reject the application, subject to the right of appeal.

(Sec. 5, 39 Stat. 508; 43 U.S.C. 627)

§ 2253.8 Cash entries; section 6, act of August 11, 1916.

(a) In case of entered lands within an approved irrigation district not subject to the Reclamation Act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the manager of the land office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in entries of like land under the homestead laws, and upon satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land.

(b) However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

(c) If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper manager all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper manager for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

§ 2253.9 Application to purchase.

(a) An application to purchase under the act of August 11, 1916, and the proofs required therewith must be signed by the applicant but need not be under oath.

(b) The application shall contain a description according to the approved plats of survey of the land sought to be purchased and shall give the serial number or numbers of the entry or entries in which the land is then included. The applicant shall also show by like evidence required in such cases that he has the qualifications of a homestead or desert-land entryman, furnishing the proof thereof.

(c) He must show whether he is applying as purchaser at tax sale, as assignee of such purchaser, or is seeking to be subrogated to the right of such purchaser or assignee.

(d) The application shall not embrace less than a legal subdivision or more than 160 acres and shall not include land in more than one land district and shall be accompanied by the usual fees and commissions provided in entries of like land under the homestead laws, together with the purchase price of the land, not less than $1.25 per acre, or such other price as may be fixed by law for such land.

(e) As the laws governing the sale of lands for taxes are not the same in the several States affected by this act, and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing proof of tax titles. However, the following general rules must be observed:

(1) If the tax title is based on court proceedings a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of court should make specific reference to the laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute.

(2) If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(3) No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

(4) If the application is not complete in substance, or based on an unredeemable tax title, the manager will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects he will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

(5) If the application is without objection and contains the evidence herein required and water has been made available for the land, cash certificate will be issued by the manager. If an appeal is filed, the same will be considered and disposed of in the usual manner.

(6) If all be found regular and sufficient, except that the irrigation works have not been constructed and water has not been made available, the cash certificate will be withheld pending proof of construction and of the availability of water.

(7) When the application to purchase is approved, and, without regard to whether or not such purchaser shall then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

APPENDIX A

FORM 1

I, _____, the duly elected, qualified, and acting _____ (designation of office) of the _____ irrigation district, duly organized under the laws of the State of _____ as found at page _____ of _____,[1] do hereby certify that the plan of irrigation and survey herewith is submitted under authority of the said district granted by resolution of the board of directors (or trustees) of said district, adopted on the _____ day of _____, 19__, a copy of which said resolution, duly verified by the secretary of said district, is submitted with, and by this reference made a part of, this certificate; and application is hereby made for the designation, under the act of August 11, 1916 (39 Stat. 506), of the tracts marked hereon "b" or "e"; that the said tracts are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States and that the majority acreage in the said irrigation district is not unentered land.

_____
(Name)

_____
(Official title)

Of the _____ *Irrigation District.*

Attest:
[SEAL]

_____
(*Secretary (or other title of recording officer*)

FORM 2

STATE OF _____
County of _____, *ss:*

_____, being duly sworn, says that he is the chief engineer of the _____ irrigation district; that the tracts shown hereon to be designated under the act of August 11, 1916 (39 Stat. 506), are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States;[2] that he has personally examined the same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor, within such limits, any placer, nor cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit (if necessary insert: except mineral deposits within the purview of the acts of March 3, 1909 (35 Stat. 844), and June 22, 1910 (36 Stat. 583), or of the act of July 17, 1914 (38 Stat. 509), as the facts may warrant); that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land (exception as above if necessary); that none of the unentered lands contain springs or water holes (see withdrawal of April 17, 1926, also Circular No. 1066, approved May 25, 1926, 51 L.D. 457); that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, as is shown in the accompanying report; that at least one-eighth of each smallest legal subdivision for which designation is sought is susceptible of reclamation from the irrigation system or (where less than one-eighth the irrigable portion of such tract) will be of more value when reclaimed than the entire tract in its native state; that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes; and that the limits of said irrigation district are correctly shown hereon.

_____

Subscribed and sworn to before me this _____ day of _____, 19—.

[SEAL] _____,
(Notary Public)

My commission expires _____.

[1] Give citation to act or acts under which the district is organized.

[2] If the chief engineer has not made a personal examination of the land sufficiently in detail to enable him to make that part of the affidavit bracketed, it should be omitted herefrom and a separate affidavit should be made on the map as to such facts by some person who has made such examination.

Subpart 2254—Arkansas Drainage

AUTHORITY: The provisions of this Subpart 2254 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2254.0–3 Authority.

(a) The act of January 17, 1920 (41 Stat. 392; 43 U.S.C. 1041–1048) provides that all those unentered, unreserved public lands and all those entered for which no final certificates have been issued, in certain townships in Arkansas, are made subject to the laws of the State of Arkansas relating to organization, government and regulation of drainage districts to the same extent and in the same manner except as otherwise provided, in which lands held under private ownership are subject to such laws, provided that the United States and all persons legally holding unpatented lands under public land laws shall be accorded all the rights, privileges and benefits given by said laws to persons holding lands in private ownership. The said act contains special provisions governing the disposal of such lands by the United States. The act of February 28, 1929 (45 Stat. 1410), amended the act of January 17, 1920, and gave consent of the United States to the levy of special assessments within the Saint Francis Levee District in Arkansas on lands of the United States, subject to the conditions hereinafter set forth.

(b) Sections 1, 2, and 3 of the act of February 28, 1929, impose no duties on the Department of the Interior nor do they require any change in the matter of entry, proof, payment, or patent. The proviso to section 1 excludes Government land, entered or unentered, from levy, assessment, or tax until the date an entryman or purchaser thereof has earned the right to a patent. If and when equitable title to any particular tract shall have passed from the Government of the United States to an entryman or purchaser, the levy, special assessment, or tax to which consent was given will become effective.

(c) Section 4, however, provides for the purchase after foreclosure by any drainage district in Tps. 14, 15, 16 N., R. 9 E., and Tps. 15, 16 N., R. 10 E., 5th P. M., in Mississippi County, and in Tps. 11 and 12 N., R. 6 E., in Poinsett County, Ark., and does not apply to the balance of the lands in the St. Francis Levee district. It is in effect an amendment of the act of January 17, 1920 (41 Stat. 392), which expressly prohibited the issuance of patent to a drainage district for lands bid in by it.

NOTE: Public land withdrawn by Executive Order 6964 of February 5, 1935 is not subject to entry until it has been classified therefor. See Subpart 2411 of this chapter.

§ 2254.0–6 Qualification of purchasers; tracts purchased need not be contiguous.

A purchaser (other than an improvement or drainage district) of land from the Government under the act of January 17, 1920, is required to have the qualifications of a homestead entryman which must be shown by his signed statement. Any purchaser hereunder shall exhaust his homestead right to the extent of the amount of lands purchased by him, and not more than 160 acres can be sold to any one purchaser. The tracts must be entered by legal subdivisions, but they need not be contiguous or in one body.

§ 2254.0–7 Public lands in certain townships made subject to State drainage laws.

All unentered, unreserved public lands in the townships described in § 2254.03, in the State of Arkansas which are subject to entry, and entered lands

for which no final certificates have issued, are by the act of January 17, 1920 (41 Stat. 392; 43 U.S.C. 1041–1048), as amended by the act of February 28, 1929, made subject to the State drainage laws to the same extent and in the same manner except as noted in §§ 2254.1–1 to 2254.9 in which lands of like character held in private ownership are or may be subject to said laws.

§ 2254.1 State charges; enforcement.

§ 2254.1–1 Report on assessments.

Certified lists showing the amount of the charges assessed against each smallest legal subdivision should be furnished by the county officers to the Bureau of Land Management as soon as the charges would become a lien on the land if in private ownership. Such office will compare said lists with its records and if any charges are assesed against land which is not subject to the State drainage laws, it will promptly notify the county auditor thereof, and advise him that the lands are not subject to sale thereunder.

§ 2254.1–2 Enforcement of lien by State sales; State report on sales.

(a) The charges against the Government lands subject thereto may, under section 3 of the act of Janaury 17, 1920 (41 Stat. 393; 43 U.S.C. 1043), be enforced by a sale of the lands by the State in the same manner and under the same proceedings as such charges would be enforced against lands held in private ownership.

(b) Immediately after the close of the sale, the State officials should furnish the Bureau of Land Management with a statement showing the name of the purchaser of each tract, including land bid in for a drainage district, the price at which each legal subdivision was sold, the amount assessed against it, the penalties and interest, the cost of the sale, and the amount of excess, if any, over and above all lawful assessment charges and the cost of sale. No entries will be allowed under said act until this requirement has been complied with.

(c) When such statement has been filed in the said office, proper notations thereof will be made on the records.

§ 2254.1–3 Cash entries by purchasers at State sale.

Section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), provides that purchasers of unentered lands at such sales by the State have 90 days from the date of sale and purchasers of entered but unpatented lands have 90 days from the expiration of the period of redemption provided for in the drainage laws under which the lands were sold, no redemption having been made within which to pay $5 per acre, together with the usual fees and commissions both original and final, charged in entry of lands under the homestead laws, and make entry. The required payments and application for entry must be filed in the Bureau of Land Management, Washington 25, D.C.

§ 2254.1–4 Cash entries by persons subrogated to rights of persons at State sale.

Unless the purchaser of unentered lands at the sale by the State files application for a patent and pays the required amounts, within the time specified in section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), any other qualified person may make application for a patent and file a statement of qualifications and pay to the Bureau of Land Management the unpaid fees, commissions, and purchase price and in addition an amount equal to the drainage charges, penalties, interest, and costs for which the land was sold, and if the lands were bid in for the drainage district, an additional amount equal to 6 percent per annum on the sum for which the lands were sold from the date of sale and shall become subrogated to the rights of such purchaser and shall be entitled to receive a patent for not more than 160 acres of said lands.

§ 2254.1–5 Procedure when payment is made to effect subrogation.

When payment is made to effect subrogation as provided in § 2254.1–4, the Bureau of Land Management shall serve notice upon the purchaser at the sale that an application for patent for the lands purchased by him has been filed and that the amount of the drainage charges, penalties, interests, and costs of the sale will be paid to him upon submission of proof of purchase and payment of said sums. The Bureau of Land Management shall make such payment as soon as said requirement shall have been fulfilled. If the lands were bid in for a drainage or improvement district, the said office will make such payments to the proper county officers.

§ 2254.1–6 Purchase of lands by drainage district.

Section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), permits the bidding in of lands for a drainage district. Section 4 of the act of February 28, 1929, (45 Stat. 1411) provides that in case of the foreclosure of the liens of any improvement or drainage district, and the lands have been purchased by said district, said improvement or drainage district may, upon proof of the sale and purchase and payment of $5 per acre, together with the usual fees and commissions charged entry of lands under the homestead laws, where such payment has not heretofore been made, receive a patent for the land. In case of unentered land, a preference right exists for 90 days from date of sale. In case of entered lands, the preference-right period is for 90 days from the expiration of the period of redemption. The drainage or improvement district may exercise the right of purchase after the period mentioned in the absence of an adverse claim. No limitation is placed on the amount of land an improvement or drainage district may enter under the act.

§ 2254.2 Proof of foreclosure required and cancellation of entry.

(a) Proof of the foreclosure of the land and of the failure of the entryman to redeem the lands in accordance with State statutes relating to the taxation of lands in private ownership in Arkansas must be furnished under the certificate and seal of the officer of the State declaring the foreclosure. Said certificate should be presented to the Bureau of Land Management, whereupon, should no objection appear, the said office will cancel the entry upon its records, as of the date of the receipt of said certificate, and note such cancellation with proper reference to the entry on the certificate. For 90 days after the expiration of the period of redemption provided by the Arkansas laws the purchaser at the sale, including the improvement district, if bid in by the district, may furnish the certificate mentioned, make entry of the lands, and receive patent in his or its own name. Should such purchaser or district fail to make entry within the 90-day period mentioned, any other person, upon furnishing said certificate, may secure the cancellation of the entry and make entry.

(b) Sections 2254.1–4 and 2254.1–5 should be observed in allowing purchases of entered lands.

§ 2254.3 Cash entry on relinquishment of homestead entry before expiration of period of redemption.

If a homestead entry, after the land covered thereby has been sold for delinquent taxes, should be subsequently relinquished or canceled prior to the expiration of the period of redemption, the purchaser at the tax sale, if the taxes have not been redeemed, will have the preference right for 30 days, after due notice of the cancellation or relinquishment of the entry, to file an application to purchase the land without having to wait until the expiration of the period of redemption. Such right is given to the actual purchaser only if the land has not been redeemed. This right to purchase is not given to the homestead entryman who allowed the land to be sold for taxes and then relinquished the same.

§ 2254.4 Excess charges to be deposited in United States Treasury.

In the sale of lands by the State, should there be paid any excess over and above the drainage charges due, the excess amount shall be paid to the Bureau of Land Management for deposit in accordance with sections 3 and 4 of the act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1043, 1044), before patent is issued.

§ 2254.5 When settlers and entrymen are not entitled to right of redemption.

To avoid confusion, misunderstanding, and conflict of rights no right of redemption, referred to in section 5 of the act of January 17, 1920 (41 Stat 393; 43 U.S.C. 1045) can be acquired by settlement on or application for unentered lands after the hour and date fixed for their sale. The Bureau of Land Management will suspend all applications for such lands advertised for sale under said Act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the act is received, unless the applicant shall show

by a statement, duly corroborated, that he settled on the land in good faith prior to the beginning of the sale, for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry the homestead application may then be allowed. If the statement does not show a sale of the land, or it was bid in by the drainage district, the homestead application may be allowed, and the homestead entryman will be required to comply with the homestead laws in the matter of residence, improvements, and cultivation.

§ 2254.6 Payment of drainage charges not required to make entry in homestead cases.

Payment of the drainage charges will not be required, and each applicant making a 3-year homestead entry where the land has been sold for delinquent drainage charges and evidence of redemption has not been furnished will be formally notified by the Bureau of Land Management of the amount of taxes assessed against said land, and of any tax certificates outstanding thereon, as shown by the records of such office.

§ 2254.7 Evidence of redemption required in connection with cash entries.

The Bureau of Land Management will reject all applications for cash entries under the acts of January 17, 1920, and February 28, 1929, where evidence of redemption is required if the same is not filed in connection therewith.

§ 2254.8 Lands subject to homestead and cash entry after 90 days from sale by State.

After the expiration of 90 days from the date of sale by the State for drainage charges the unentered lands will be subject to ordinary homestead entry, in which case residence, improvements, and cultivation are required, or to entry under the act of January 17, 1920, which does not require such compliance with the homestead law. The drainage charges and expenses incident to sale will become a lien on the land which can be enforced by the State after patent issues.

§ 2254.9 Issuance of cash certificates; receipts and patents.

In case payment is made in purchases under the acts of January 17, 1920, and February 28, 1929, and evidence is furnished showing the qualifications of the purchaser, the usual cash certificates and receipts will be issued by the Bureau of Land Management, and should no objection appear patent will issue in due course of business.

Group 2300—Withdrawal and Reservations

PART 2310—PROCEDURE

Subpart 2311—Withdrawals

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2315.1 Withdrawals or reservations for the use or benefit of non-Federal Agencies.

Subpart 2311—Withdrawals

AUTHORITY: The provisions of this Subpart 2311 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 2311.0–1 Purpose.

The regulations in this subpart apply to all proposals for withdrawal, reservation or restriction, under the authority of Executive Order 10355, May 26, 1952 (17 F.R. 4831), or under the statutory authority of the Secretary of the Interior, or under the Act of February 28, 1958 (72 Stat. 27), of lands or water areas owned or controlled by the United States. However, only the following apply to proposals by the Department of Defense which are governed by the provisions of sections 1, 2, and 3 of the Act of 1958, *supra:* §§ 2013.2–7, 2311.0–5, 2311.0–6, 2311.1–1, 2311.1–2, 2311.1–3, and 2330.2.

§ 2311.0–3 Authority.

(a) The act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141–143, 16 U.S.C. 471), provides that the President may at any time in his discretion temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification, or other public purposes to be specified in the orders of withdrawal, such withdrawal to remain in force until revoked by him or by an act of Congress.

(b) The provision of the said act of June 25, 1910, that all lands withdrawn under the provisions of that act shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, "so far as the same apply to minerals other than coal, oil, gas, and phosphates," is changed by an amendment to said act, made by the act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 142), so as to provide that such lands shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

(c) Section 2 of the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 142) contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law.

(d) (1) E.O. 6910, Nov. 26, 1934, and E.O. 6964, Feb. 5, 1935, withdrew the remaining public lands from entry.

(2) The said orders did not affect lands then in reservations. Therefore, lands in national forests and in reclamation projects included in such reservations prior to the dates of said orders, and not otherwise reserved, are subject to disposition under the Forest Homestead Act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–508, 509) and under the Reclamation Homestead Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), respectively.

(3) With respect to mineral lands, the said orders do not prevent prospecting, locating, developing, mining, entering, leasing, or patenting of the withdrawn lands, under the provisions of the applicable mineral or mineral leasing laws.

§ 2311.0–5 Definitions.

As used in §§ 2311.1, 2311.2, 2315.1, and 2330.2, the term "withdrawal or reservation" means "withdrawal, reservation, or restriction" and "land" includes both land and water areas.

§ 2311.0–6 Who may apply.

The heads of Federal agencies and instrumentalities or any subordinate officer designated by them may apply for the withdrawal, reservation or restriction of lands or water areas owned or controlled by the United States for the use or benefit of the agency or instrumentality they represent or where such agency has a direct interest in a State, Territorial, or local program, for the use or benefit of a State or Territory, or political subdivision thereof in connection with such program.

§ 2311.1 Procedures.

§ 2311.1–1 Filing of applications.

(a) Except where the application is classified by the applicant for national security reasons, all applications for withdrawal or reservation must be filed in duplicate in accordance with the provisions of § 1821.1 of this chapter. Where the application is classified by the applicant agency for national security reasons, it must be submitted to the Office of the Secretary, Department of the Interior, Washington 25, D.C.

(b) No specific form of application is prescribed but it must contain the following information:

(1) The name and address of the applicant agency and intended using agency;

(2) Legal description of the lands desired, in terms of the public land surveys, where applicable;

(3) When sections 1, 2, and 3 of the Act of February 28, 1958 (72 Stat. 27), are applicable, location of the area involved, to include a detailed description of the exterior boundaries of the lands to be included within, and those to be excepted from, the proposed withdrawal or reservation.

(4) Gross acreage within the exterior boundaries of the requested withdrawal or reservation, and net public land, water, or public land and water acreage covered by the application;

(5) The purpose or purposes for which the area is proposed to be withdrawn, reserved, or restricted, or if the purpose or purposes are classified for national security reasons, a statement to that effect;

(6) Whether the proposed use will result in contamination of any or all of the requested withdrawal or reservation area, and if so, whether such contamination will be permanent or temporary;

(7) The estimated period during which the proposed withdrawal or reservation will continue in effect;

(8) Whether, and if so to what extent, the proposed use will affect continuing full operation of the public land laws and Federal regulations relating to conservation, utilization, and development of mineral resources, timber and other material resources, grazing resources, fish and wildlife resources, water resources, and scenic, wilderness, and recreation and other values;

(9) If effecting the purpose for which the area is proposed to be withdrawn, reserved, or restricted, will involve the use of water in any State, whether, subject to existing rights under law, the intended using agency has acquired, or proposes to acquire, rights to the use thereof in conformity with State laws and procedures relating to the control, appropriation, use, and distribution of water.

(10) A justification for the proposed withdrawal or reservation, including statements showing the need for all the area requested and for the limitation, if any, of concurrent uses;

(11) Citation of the statutory or other authority for the type of withdrawal or reservation requested.

(c) If the application is for the withdrawal of more than 5,000 acres for any one project or facility, the application must be accompanied by a map or maps, in duplicate, of adequate scale, showing clearly the location of the land by legal subdivisions; the proposed utilization of the property, including the location of the major improvements to be erected or installed; areas to be inundated, if any; and any cultural or other features of the lands requested and of the surrounding area deemed by the applicant to be significant and to illustrate the need for and effect of the proposed withdrawal. Standard base maps, where suitable, may be used for the purposes of this paragraph.

§ 2311.1–2 Segregative effect of applications.

(a) The noting of the receipt of the application in the tract books or on the official plats maintained by the Land Office in which the application was properly filed or in the tract books maintained by the Washington Office of the Bureau of Land Management if there is no Land Office for the State in which the lands are located shall temporarily segregate such lands from settlement location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

(b) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The authorized officer of the Bureau of Land Management will have a notice published in the FEDERAL REGISTER specifying the date and hour that the lands so eliminated will be relieved of the segregative effect of the agency's application and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application.

(c) An amendment of an agency's application so as to include additional lands shall have as to such lands the segregative effect provided for in paragraph (a) of this section from the date of the entry of information regarding the receipt of such request on the records mentioned in paragraph (a) of this section. Such an amendment will be processed either as a part of that application or separately, as the facts may warrant.

§ 2311.1–3 Publicity; hearing; investigations; and negotiations.

(a) The authorized officer of the Bureau of Land Management will have published in the FEDERAL REGISTER a notice of the filing of the application and of the opportunity of the public to object to, or comment on, the proposed withdrawal or reservation. In cooperation with the applicant agency, he will also provide for publicity sufficient to inform the interested public of the proposed withdrawal or reservation.

(b) If, as a result of such notice and publicity, sufficient protest is filed against the proposal, or if, in his discretion, it is otherwise desirable in the public interest, the authorized officer of the Bureau of Land Management will, subject to the approval of the Secretary of the Interior if the applicant agency objects, hold a public hearing at a time and in a place convenient to the interested public and to the agencies involved. Costs of such hearings incurred by the Bureau of Land Management, except for the salaries of its personnel, will be borne by the applicant agency.

(c) The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

§ 2311.1–4 Findings, reviews; publication.

(a) The authorized officer of the Bureau of Land Management will report to the applicant agency his findings of fact, and where he has authority to effect the withdrawal or reservation, his conclusions in respect to the application. If the applicant agency does not concur with such findings or conclusions, it may request the Director, Bureau of Land Management, to review the case, and if it feels aggrieved by the findings or conclusions of the Director, may request the Secretary for further review. When the proposed withdrawal or reservation involves authority delegated to the Secretary by Executive Order 10355, May 26, 1952 (17 F.R. 4831) and if the applicant is a Federal agency or instrumentality

outside of the Department of the Interior and it does not concur in the findings of the Secretary, the applicant may request the Secretary to refer the case to the Bureau of the Budget.

(b) The Secretary of the Interior, or his authorized agent, will approve or deny the application in whole or in part, provided that no withdrawal or reservation affecting land under the administrative jurisdiction of an Executive department or agency of the Government other than the Department of the Interior will be effected without the prior approval or concurrence of the head of the department or agency concerned, or his delegate.

(c) When an application is finally denied in whole or in part by the authorized officer, he will have published in the FEDERAL REGISTER a Notice of Determination which will specify the date and hour that the affected lands will be relieved of the segregative effect of the agency's application.

(d) When an application is finally approved in whole or in part by the authorized officer, he will have published in the FEDERAL REGISTER an appropriate order of withdrawal or reservation.

§ 2311.2 Payment for improvements.

The allowance of an application for withdrawal under the regulations of this part will be conditional upon the payment by the applicant agency or upon agreement of the applicant agency to pay to the owner or owners of range or other improvements placed upon the lands pursuant to an agreement with the United States such amount and at such times as the authorized official of the Bureau of Land Management deems fair and reasonable under the circumstances and the terms of such agreement to compensate for the loss of the improvements, providing that the applicant agency is authorized by law to make such compensation. In addition, a holder of a grazing license or permit for lands within a grazing district will be compensated for the loss resulting from the use of the lands embraced in the license or permit for war or national defense purposes in an amount to be determined fair and reasonably by, and to be paid by, the head of the Department or Agency of the Federal Government making such use.

§ 2311.3 Effect of withdrawals made subsequent to completion of State and other selections.

(a) The Supreme Court of the United States in Payne v. Central Pacific Railway Company (255 U.S. 228, 65 L. ed. 598) on February 28, 1921, decided that the railroad indemnity selection there involved should be disposed of "on its merits unaffected by the withdrawal" of the land made after perfection of the selection for a water-power site under the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141–143). On March 7, 1921, in the case of Payne v. New Mexico (255 U.S. 367, 65 L. ed. 680), the court concluded that the "Land Department" should dispose of the State's school-land indemnity selection "in regular course unaffected by the elimination of the base tract from the reservation" for forestry purposes after the completion of the selection. In the case of Payne v. United States ex rel. Newton (255 U.S. 438, 65 L. ed. 720), on March 14, 1921, the court referred to the departmental instructions issued April 25, 1914 (43 L.D. 294), and said:

> The Secretary stated that the lapse of two years after the issue of the receiver's receipt will bar a contest or protest based upon any charge whatsoever, save where the proceeding is sustained by some special statutory provision.

(b) In Wyoming v. United States (255 U.S. 489, 65 L. ed. 742), decided on March 28, 1921, the court held that the conditions obtaining at the date of the completed school-land indemnity selection, with respect to the character of the land, whether known or believed to be mineral, were controlling and that the "Land Department" was without authority to cancel the selection on the ground that the selected land was subsequently included in a petroleum withdrawal and proven to be mineral land.

(c) The adjudication of cases controlled by the decisions mentioned will be in harmony with the principles announced in those decisions.

Subpart 2312—Restorations and Revocations

AUTHORITY: The provisions of this Subpart 2312 issued under 68 Stat. 377 as amended, R.S. 2478; 40 U.S.C. 472; 43 U.S.C. 1201.

§ 2312.0–1 Purpose.

The regulations of this Subpart 2312 apply to lands and interests in lands withdrawn or reserved from the public domain, except lands reserved or dedicated for national forest or national park purposes, which are no longer needed by the agency for which the lands are withdrawn or reserved.

§ 2312.0–3 Authority.

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, governs the disposal of surplus Federal lands or interests in lands. Section 3 of that act (40 U.S.C. 472), as amended, February 28, 1958 (72 Stat. 29), excepts from its provisions the following:

(a) The public domain.

(b) Lands reserved or dedicated for national forest or national park purposes.

(c) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws.

(d) Lands withdrawn or reserved from the public domain, but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of the General Services Administration, determines are not suitable for return to the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise.

§ 2312.1 Procedures.

§ 2312.1–1 Notice of intention.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper land office in the State in which the lands are located. For lands in States in which there is no land office, they shall file their notices with the Bureau of Land Management, Washington 25, D.C., except that notices for lands in North Dakota or South Dakota shall be filed in the Land Office at Billings, Montana, notices for lands in Kansas or Nebraska shall be filed in the Land Office at Cheyenne, Wyoming, and for lands in Oklahoma in the Land Office at Santa Fe, New Mexico.

(b) No specific form of notice is required, but all notices must contain the following information:

(1) Name and address of the holding agency.

(2) Citation of the order which withdrew or reserved the lands for the holding agency.

(3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them.

(4) Description of the improvements existing on the lands.

(5) The extent to which the lands are contaminated and the nature of the contamination.

(6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures.

(7) The extent to which the lands have been changed in character other than by construction of improvements.

(8) The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the property.

(9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value.

(10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted covering the lands.

(11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.

(12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.

(13) Recommendations as to the further disposition of the lands, including, where appropriate, disposition by the General Services Administration.

(c) The holding agency will send one copy of its report on unneeded lands to the appropriate regional office of the General Services Administration for its information.

§ 2312.1–2 Return of lands to the public domain; conditions.

(a) When the authorized officer of the Bureau of Land Management determines the holding agency has complied with the regulations of this part, including the conditions specified in paragraph (b) of this section, and that the lands or interests in lands are suitable for return to the public domain for disposition under the general public land laws, he will notify the holding agency that the Department of the Interior accepts accountability and responsibility for the property, sending a copy of this notice to the appropriate regional office of the General Services Administration.

(b) Agencies will not be discharged of their accountability and responsibility under this section unless and until:

(1) The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

(2) To the extent deemed necessary by the authorized officer of the Bureau of Land Management, the holding agency has undertaken or agrees to undertake or to have undertaken appropriate land treatment measures correcting, arresting, or preventing deterioration of the land and resources thereof which has resulted or may result from the agency's use or possession of the lands.

(3) The holding agency, in respect to improvements which are of no value, has exhausted General Services Administration's procedures for their disposal and certifies that they are of no value.

(4) The holding agency has resolved, through a final grant or denial, all commitments to third parties relative to rights and privileges in and to the lands or interests therein.

(5) The holding agency has submitted to the appropriate office mentioned in paragraph (a) of § 2312.1–1 a copy of, or the case file on, easements, leases, or other encumbrances with which the holding agency or its predecessors have burdened the lands or interests therein.

§ 2312.1–3 Declarations to General Services Administration.

(a) When the authorized officer of the Bureau of Land Management determines that the holding agency has complied with the regulations of this part and that the lands or interests in lands other than minerals are not suitable for return to the public domain for disposition under the general public land laws, because the lands are substantially changed in character by improvements or otherwise, he will request the appropriate officer of the General Services Administration, or its delegate, to concur in his determination.

(b) When the authorized officer of the Bureau of Land Management determines that minerals in lands subject to the provisions of paragraph (a) of this section are not suitable for disposition under the public land mining or mineral leasing laws, he will notify the appropriate officer of the General Services Administration or its delegate of this determination.

(c) Upon receipt of the concurrence specified in paragraph (a) of this section, the authorized officer of the Bureau of Land Management will notify the holding agency to report as excess property the lands and improvements therein, or interests in lands to the General Services Administration pursuant to the regulations of that Administration. The authorized officer of the Bureau of Land Management will request the holding agency to include minerals in its report to the General Services Administration only when the provisions of paragraph (b) of this section apply. He will also submit to the holding agency, for transmittal with its report to the General Services Administration, information of record in the Bureau of Land Management on the claims, if any, by agencies other than the holding agency of primary, joint, or secondary jurisdiction over the lands and on any encumbrances under the public land laws.

Subpart 2315—Transfer of Jurisdiction

AUTHORITY: The provisions of this Subpart 2315 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2315.1 Withdrawals or reservations for the use or benefit of non-Federal agencies.

Lands withdrawn or reserved under Subpart 2311 for the use or benefit of a non-Federal agency will remain or will be placed under the jurisdiction of the appropriate Federal agency.

PART 2320—INTERIOR DEPARTMENT

Subpart 2321—Bureau of Land Management

Sec.

2321.1 Public water reserves.
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2321.1–2 Lands containing hot springs or springs; waters of which possess curative properties.
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Subpart 2323—Bureau of Reclamation

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Subpart 2325—Bureau of Indian Affairs

2325.1 Designation of Indian reservations in Alaska.

Subpart 2321—Bureau of Land Management

AUTHORITY: The provisions of this Subpart 2321 issued under sec. 11, 39 Stat. 865; 43 U.S.C. 301, except as otherwise noted.

§ 2321.1 Public water reserves.

§ 2321.1–1 Lands containing springs or water holes needed or used by the public for watering purposes.

(a) *Withdrawal of lands from settlement, location, sale, or entry; reservation for public use.* By executive order of April 17, 1926, it was ordered that every smallest legal subdivision of the public-land surveys which is vacant, unappropriated, unreserved, public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300), and in aid of pending legislation.

(b) *Purpose of withdrawal.* The Executive order of April 17, 1926, was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes. It is not therefore to be construed as applying to or reserving from homestead or other entry lands having small springs or water holes affording only enough water for the use of one family and its domestic animals. It withdraws those springs and water holes capable of providing enough water for general use for watering purposes.

(c) *Lands not needed or used by the public for watering purposes.* (1) The object of the Executive order of April 17, 1926, was to:

> * * * preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes.

(2) In the States of Alabama, Arkansas, Florida, Louisiana, Michigan, Minnesota, Missouri, Mississippi, and Wisconsin the springs or water holes, if any, on the public lands are not needed or used by the public for watering purposes. The conditions in those States are entirely different from those in the other public-land States where grazing is carried on to a considerable extent and not only springs and water holes but other available sources of water supply are sometimes quite scarce. There are no lands in the States mentioned that come within the purview of the Executive order of April 17, 1926. Therefore, a nonwater hole and nonspring statement is not required in connection with applications for lands in such States. Neither will such statement be required in connection with applications for lands in Federal reclamation projects.

(d) *Showing as to springs or water holes required in connection with selections, filings, or entries.* (1) It must

be shown by a duly corroborated state-

be shown by a duly corroborated statement in connection with every selection, filing, or entry made upon or subsequent to the date of Executive order of April 17, 1926, or theretofore filed but not allowed, that no spring or water hole exists, if it be a fact, upon any legal subdivision of the land sought to be appropriated, if surveyed, and if unsurveyed, within one-quarter of a mile from the exterior boundaries of said land. If there be any spring or water hole the showing should state the exact location and size thereof; together with an estimate of the quantity of water in gallons which it is capable of producing daily, and any other information necessary to determine whether or not it is valuable or necessary as a public water reserve.

(2) The showing mentioned will not be required in connection with proposed State exchanges or indemnity school and other State selections, involving public lands in grazing districts, where agreements as to the exchanges or selections have been reached by representatives of the State, and the Bureau of Land Management.

(3) By E.O. 5106 of May 4, 1929 Alaska was excluded from the public water reserve created by E.O. of Apr. 17, 1926.

(e) *Application of order of withdrawal to specified cases.* (1) In case the attempted appropriation of the land is one the allowance of which is within the discretion of the Secretary of the Interior or the Bureau of Land Management, the showing required by paragraph (d) of this section must be furnished, irrespective of the date of filing of the application, entry, or selection, before favorable action is taken thereon.

(2) This requirement shall not apply, however, to selections or filings made in pursuance of grants which have been determined to be "grants in praesenti," and to have attached and become effective prior to April 17, 1926, or to valid settlement claims initiated prior to said date and thereafter maintained in accordance with the law applicable thereto.

(3) Geological Survey designation lists, under the Enlarged Homestead Acts will contain a paragraph that:

This area contains no springs or water holes of the type intended to be withdrawn by Executive order of April 17, 1926, creating public water reserve No. 107, and, therefore, is unaffected by it.

(4) Where orders of designation under the said acts contain the quoted paragraph in paragraph (c) of this section, it will not be necessary for an entryman to make the showing required by paragraph (d) of this section.

§ 2321.1–2 Lands containing hot springs or springs the waters of which possess curative properties.

(a) *Withdrawal of land from settlement, location, sale, or entry; reservation for lease.* (1) By E.O. 5389, July 7, 1930, it was ordered "that every smallest legal subdivision of the public land surveys which is vacant, unappropriated, unreserved public land and contains a hot spring, or a spring the waters of which possess curative properties; and all land within one-quarter of a mile of every such spring located on unsurveyed public land, exclusive of Alaska, be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for lease under the provisions of the act of March 3, 1925 (43 Stat. 1133), subject to valid existing rights."

(2) By Public Land Order No. 399 of August 20, 1947, Executive Order 5389 was amended by deleting therefrom the words "exclusive of Alaska," so that the said order as amended applies to lands containing hot or medicinal springs in Alaska as well as elsewhere in the United States.

(b) *Purpose of withdrawal.* The Executive order mentioned in paragraph (a) of this section was designed to preserve for general public use and benefit the unreserved public lands, containing hot springs or springs the waters of which possess curative properties, in order that they might be leased under the provisions of the act of March 3, 1925 (43 Stat. 1133; 43 U.S.C. 971), and the regulations issued thereunder, contained in § 2321.1–4.

(c) *Showing as to hot or medicinal springs required with applications to enter or select; permission to use lands.* (1) An applicant to enter or select lands situated outside of a national forest in any State must show that no hot spring or other spring having waters possessing curative properties exists, if it be a fact, upon any legal subdivision of land sought to be appropriated, if surveyed, and if unsurveyed, that no portion of the land applied for is within an area of one-quarter of a mile from such spring.

(2) If there be any such spring upon or adjacent to the land as stated, the applicant must show the exact location and size thereof, together with an estimate of the quantity of water in gallons which it is capable of producing daily and any other information necessary to determine whether or not it is valuable or necessary within the meaning of said Executive order. The showing must be duly corroborated.

(3) Permission may be obtained to use or improve lands containing such springs under the said act of March 3, 1925.

(4) The showing mentioned will not be required in connection with proposed State exchanges or indemnity school and other State selections involving public lands in grazing districts, where agreements as to the exchanges or selections have been reached by representatives of the States and the Bureau of Land Management.

(d) *Application of order of withdrawal to specified cases.* (1) In case the attempted appropriation of lands is one of the allowance of which is within the discretion of the Secretary of the Interior or the Bureau of Land Management, the showing referred to in paragraph (c) of this section must be furnished irrespective of the date of filing of the application, entry, or selection before favorable action is taken thereunder.

(2) The said requirement shall not apply, however, to selections or filings made in pursuance of grants which have been determined to be "grants in praesenti" and to have attached and become effective prior to July 7, 1930, or to valid existing rights, initiated prior to said date and thereafter maintained in accordance with the laws applicable thereto.

(3) Geological Survey designation lists, under the Enlarged Homestead Act, will contain a paragraph stating:

This area contains no spring of the type intended to be withdrawn by Executive order of July 7, 1930, No. 5389, and therefore is unaffected by it.

(4) Where orders of designation under the Enlarged Homestead Acts contain the above-quoted paragraph, it will not be necessary for entrymen to make the showing required by paragraph (c) of this section.

(5) Also in cases of applications or entries for lands within Federal reclamation projects, where a report is made by the Bureau of Reclamation that the lands contain no spring of the type intended to be withdrawn by E.O. 5389, July 7, 1930, it will not be necessary for the claimant to make the showing required by paragraph (c) of this section.

(R.S. 2478; 43 U.S.C. 1201)

§ 2321.1–3 Use of lands withdrawn as public water reserves.

(a) *Statutory authority; governing regulations.* Permission may be obtained to use or improve lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141–143, 16 U.S.C. 471), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), in accordance with the regulations governing said act, as found in § 2334.4–1 of this chapter, as supplemented by this section.

(b) *Stipulations and agreements required.* As a condition precedent to the granting of any such permission, the applicant will be required to execute such stipulations and agreements as may be deemed proper and necessary by the manager of the proper land office, to safeguard the public interests, after investigation of the facts, circumstances, and conditions in connection with each individual case.

(c) *Who may make application; form and contents.* (1) Any citizen or association of citizens of the United States, or any corporation, duly created and existing under and by virtue of the laws of any State of the United States, who may desire to improve the productivity of any water hole or source of water supply within the boundaries of any public water reserve, or to conduct such waters from their source within such a reserve to a point or place more convenient for public use, may file in the office of the manager of the land office for the district, within which the reservation is situated, an application for permission so as to use the reserved land, or conduct the waters over or through the same.

(2) Such application should be in the form of a statement, duly corroborated by at least two persons, setting forth in detail the plan of the applicant for the

improvement and care of the public water reserve, the public necessity for such improvement, the reasons why such plan will be more conducive to the public good and better conserve the waters for public use, and any other facts and circumstances pertinent thereto.

(d) *Map and field notes required when water is to be conducted outside of the reserve.* If the waters are to be conducted from their source within the reserve to a point outside of the reserve, the application should be accompanied by a map and separate field notes in duplicate, the map being delineated upon tracing linen, and prepared in accordance with the regulations governing the submission of applications under the act of February 15, 1901, also evidence that applicant has applied to the proper State official for permission to appropriate the waters to the uses contemplated and has prosecuted such application in good faith to date of the filing of the application.

(e) *When reservoir declaratory statement may be required.* If the place of use of the water is upon unreserved public land the applicant may be called upon to file a reservoir declaratory statement under the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as well as the application under the act of February 15, 1901, if deemed advisable.

(f) *Conditions of permit; failure to comply with the same, assignment.* (1) Each permit shall contain, besides those found necessary in individual cases, the following conditions:

(a) That the right to appropriate the waters of the State to the uses contemplated shall be obtained within 1 year from and after the issuance of the permit and the permittee shall file a certificate to that effect issued by the proper State authority.

(b) That the proposed system shall be fully completed in substantial conformity with the plan upon which the permit is predicated, within 2 years from and after the issuance of such permit, unless a different period is specifically provided for in such permit.

(c) That of the permittee shall, during the month of January, in each year after the completion of such system, file with the manager of the land district within which the system is located, a statement of maintenance, in substantially the following form:

_____, of
(Name)
_____, states
(Address)

that he is the President of the _____ company (or person) to whom permit (give land district and serial number), was issued by _____, (give date), in connection with public water reserve No. _____ that the system as set forth and described in said permit has been kept in repair and water sufficient for the public needs has been kept therein during the whole of the calendar year of 19__, that the same has been kept open to the public at all times during the year, and that the said permittee has in all things, complied with the provisions of said permit, and the stipulations therein contained and the acts under which said permit was issued.

_____
(Signature)

_____
(Date)

(2) In the event that the State certificate as to the right to appropriate the water is not filed within 1 year, or proof of the construction of the system, consisting of the statement of the permittee duly corroborated by two witnesses within 2 years or such other period as may be mentioned in the permit, or statement of maintenance is not filed as hereinbefore provided or in case any of the terms, conditions, provisions, or stipulations of the permit shall not be well and in good faith performed, observed, and carried out, then such permit shall become and be subject to cancellation. Nothing hereinbefore contained, however, is to be construed as limiting the power or authority of the manager to cancel and determine the permit at any time when in his judgment such action is desirable.

(3) Permits issued hereunder are transferable only upon the written authority and consent of the manager.

(g) *Changes in system or new structures may be authorized.* If, at any time, it becomes necessary for the permittee to change his system or to erect structures other than those authorized by his permit, application for permission so to do, in the form of a statement setting forth in detail the reason and necessity for the change must be filed, and no such change shall be made until authorized in writing by the manager.

(R.S. 2478; 43 U.S.C. 1201)

§ 2321.1–4 Leasing of public lands near or adjacent to springs, for bath houses, hotels, or other improvements.

(a) *Statutory authority.* The act of March 3, 1925 (43 Stat. 1133; 43 U.S.C. 971) authorizes the issuance of leases for periods not exceeding 20 years of tracts of land near or adjacent to mineral, medicinal, or other springs located upon unreserved public lands or public lands withdrawn for the protection of such springs, for the erection of bath houses, hotels, or other improvements for the accommodation of the public. Leases may issue under the act to any responsible persons or associations, which words are construed to include private corporations and municipalities.

(b) *Lands which may be leased.* Leases may issue for surveyed or unsurveyed unreserved public lands in the several States and in Alaska, situated near or adjacent to mineral, medicinal, or other springs, which are located upon unreserved public lands, and for public lands which have been withdrawn for the protection of such springs.

(c) *Form and contents of application.* An application for lease should be made in duplicate, and should cover or include the following:

(1) Applicant's name and address.

(2) If applicant is a private corporation, a certified copy of the articles of incorporation.

(3) If applicant is a municipality, the law or charter and procedure taken by which the municipality has become a legal body corporate. An application by a private corporation or municipality should show that it is legally qualified to take the lease requested and that the taking of such lease has been duly authorized by its governing body.

(4) An accurate description of the land desired. If the land is surveyed it should be described with reference to the public-land surveys. A lease may be granted for part of a legal subdivision or for more than one legal subdivision, in the discretion of the manager. If the land is unsurveyed, the description thereof should conform to requirements set forth in § 1821.7–1 of this chapter.

(5) The names and addresses of three persons to whom reference may be made as to applicant's reputation and business standing and as to his ability, both from a financial standpoint and otherwise, to carry out the contemplated project.

(6) The period of time for which the lease is desired, not to exceed 20 years, and the purpose for which the lease is sought, whether for the erection of a bathhouse, hotel, or other improvement for the accommodation of the public. It is important that the application should specify all purposes for which it is intended or desired to use the land, as a lease, if issued, will authorize the use of the land only for the purposes specified in the application, and its use for any other purpose will not be permitted. Thus, if an applicant for a hotel in addition to using the land for ordinary hotel purposes, wishes to operate a billiard hall or moving-picture theater, etc., on the land, that fact should be disclosed in the application.

(7) Details as to the proposed improvements, including the estimated cost of construction and of subsequent maintenance; also the time when construction work will begin and when it will be completed, if the proposed lease is granted.

(d) *Authority of the manager to regulate prices.* All leases issued under the act of March 3, 1925, will contain stipulations authorizing the manager to fix the rates and prices for accommodations and services whenever this is deemed necessary. The charges which may be made may or may not be regulated by the manager as may be deemed proper in the particular case.

(e) *Application for lease.* An application for lease should be filed in duplicate in the proper land office.

(f) *Granting of lease is discretionary.* The granting of an application for lease is discretionary, and any application may be granted or denied in part or in its entirety as may appear to be warranted in the particular case.

(43 Stat. 1133; 43 U.S.C. 971)

§ 2321.3 Stock driveways.

§ 2321.3–1 Withdrawal of lands for stock driveways.

The reservation of driveways for stock provided for in section 10 of the act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300) will be considered on application of parties interested on recommendation of other departments of the Government, or on the reports of

which the system is located, a statement

(R.S. 2478; 43 U.S.C. 1201)

agents of this Department. Lands withdrawn for driveways for stock or in connection with water holes can not thereafter be entered.

§ 2321.3–2 Application for stock-driveway withdrawal.

(a) Upon the receipt in the proper land office of a duly executed application, in duplicate, for the withdrawal of public lands for a stock driveway by responsible parties in interest, the lands described therein shall be segregated from disposition temporarily, pending final action thereon by the Bureau of Land Management.

(b) Pending and during such temporary segregation, applications to enter or select any affected lands may be received and suspended.

(c) Lands withdrawn for driveways for stock or in connection with water holes are not subject to entry or disposition, and applications for the acquisition of lands so withdrawn will be rejected by the manager. Applications for the exchange of such lands, which show that they are filed pursuant to a program for the improvement of stock driveways, and applications to lease or use such lands under any appropriate public land law, until such time as they may be needed for the purposes of the withdrawal, and where the proposed use will not interfere with such purpose, will receive consideration.

Subpart 2223—Bureau of Reclamation

AUTHORITY: The provisions of this Subpart 2323 issued under sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373.

§ 2323.0–1 Purpose.

The withdrawal of these lands at first is principally for the purposes of making surveys and irrigation investigations in order to determine the feasibility of the plans for irrigation and reclamation proposed. Only a portion of the lands will be irrigated, even if the project is feasible, but it will be impossible to decide in advance of careful examination what lands may be watered, if any, and the mere fact that surveys are in progress is no indication whatever that the works will be built. It cannot be determined how much water there may be available or what lands can be covered or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

§ 2323.0–3 Authority.

Section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), provides for the withdrawal of lands from all disposition other than that provided for by said act. Since the passage of the act of June 25, 1910 (36 Stat. 835; 43 U.S.C. 436, 437), lands withdrawn as susceptible of irrigation are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by an authorized officer, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437). Where settlements had been affected in good faith prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law. The Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto are hereinafter referred to generally as the reclamation law.

§ 2323.0–5 Definitions.

(a) *Forms of withdrawal.* There are two classes of withdrawals authorized by the act, one commonly known as "withdrawals under the first form," which embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other commonly known as "withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works, but which may possibly be irrigated from such works.

§ 2323.1 Effect of withdrawals.

§ 2323.1–1 Under first form.

After lands have been withdrawn under the first form they cannot be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied. Any withdrawal otherwise valid shall not be affected by failure to note same on tract book or otherwise follow usual procedure. (42 L.D. 318.) Lands cannot be examined at the instance of individuals prior to the completion of construction to determine whether particular lands will be irrigable. (42 L.D. 8.)

CROSS REFERENCE: For mineral locations and entries in reclamation withdrawals, see § 3400.4 of this chapter.

§ 2323.1–2 Effect of withdrawals under second form.

Lands withdrawn under the second form and becoming subject to entry in the manner provided by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the reclamation law, and all application to make selections, locations, or entries of any other kind on such lands should be rejected, except that where settlement rights were acquired prior to the withdrawal and have been diligently prosecuted and the homestead law complied with, the settler will be entitled to make and complete his entry subject to all the charges, terms, conditions, limitations, and provisions of the reclamation law. (See Sarah E. Allen, 44 L.D. 331.) No person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after withdrawal of the land from settlement and entry.

§ 2323.1–3 Claims initiated prior to withdrawals; reservation for ditches or canals.

Withdrawals made under either of these forms do not defeat or adversely affect any valid entry, location, or selection which segregated and withheld the lands embraced therein from other forms of appropriation at the date of such withdrawal; and all entries, selections, or locations of that character should be permitted to proceed to patent or certification upon due proof of compliance with the law in the same manner and to the same extent to which they would have proceeded had such withdrawal not been made. All lands, however, taken up under any of the land laws of the United States subsequent to October 2, 1888, are subject to rights-of-way for ditches or canals constructed by authority of the United States (act of Aug. 30, 1890, 26 Stat. 391; 43 U.S.C. 945). All entries made upon the lands referred to are subject to the following proviso of the act cited:

That in all patents for lands hereafter taken up under any of the land laws of the United States, or on entries or claims validated by this Act, west of the one hundredth meridian, it shall be expressed that there is reserved from lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

§ 2323.1–4 Effect of filing of farm-unit plats.

Where an authorized officer by the approval of farm-unit plats has determined or may determine, that the lands designated thereon are irrigable, the filing of such plats in the Bureau of Land Management and in the land offices is to be regarded as equivalent to an order withdrawing such lands under the second form, and as an order changing to the second form any withdrawals of the first form then effective as to any such tracts. This applies to all areas shown on the farm-unit plats as subject to entry under the provisions of the reclamation law or as subject to the filing of water-right applications, and to all farm units to which an authorized officer has announced that water is ready to be delivered.

CROSS REFERENCE: For the Bureau of Reclamation regulations relating to the filing of farm-unit plats, see Part 401 of this title.

§ 2323.2 Payment for lands acquired.

If any lands embraced in any unapproved or uncertified selection are needed in the construction and maintenance of any irrigation works (other than for right-of-way for ditches or canals reserved under act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945) under the reclamation law, payment therefor will be made upon agreement of the owner with the representative of the Government as to the value of the land and the improvements thereon. Where the owner of the land and the representative of the Government fail to agree as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the

Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 421).

CROSS REFERENCE: For regulations concerning rights-of-way for ditches or canals, see Subpart 2234.

§ 2323.3 Appropriation of land for ditches or canals.

Should a homestead entry embrace land that is needed in whole or in part for purposes contemplated by said proviso in the act of August 30, 1890 (26 Stat. 391; 43 U.S.C 945) the land would be taken for such purpose, and the entryman would have no claim against the United States for the same.

§ 2323.4 Effective dates of withdrawals and restorations.

(a) All withdrawals become effective on the date upon which they are ordered and all orders for restorations on the date they are received in the land office unless otherwise specified in the order. (George B. Pratt et al., 38 L.D. 146.)

CROSS REFERENCE: For withdrawals and restorations, see Subpart 2311.

(b) Upon the cancellation of an entry covering lands embraced within a withdrawal under the Reclamation Act such withdrawal becomes effective as to such lands without further order. (See Cornelius J. MacNamara, 33 L.D. 520.) Such lands under first-form withdrawal cannot therefore, so long as they remain so withdrawn, be entered or otherwise appropriated, either by a successful contestant or any other person.

CROSS REFERENCE: For cancellations, see Subpart 1826 of this chapter.

§ 2323.5 Improvements made prior to conformation of entry; area of farm unit.

Inasmuch as every entry made under the reclamation law is subject to conformation to an established farm unit, improvements placed upon the different subdivisions by the entryman prior to such conformation are at his risk. (Jerome M. Higman, 37 L.D. 718.) They should be confined to one legal subdivision until the entry is conformed. In readjusting such an entry the authorized officer is not required to confine the farm unit to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract lying outside of the entry, so as to equalize in value the several farm units. (Idem.) The act of June 27, 1906 (34 Stat. 519; 43 U.S.C. 434), authorizes the Secretary of the Interior to fix a lesser area than 40 acres as a farm unit when, "by reason of market conditions and special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than 40 acres may be sufficient for the support of a family" or when necessary "in order to provide for practical and economical irrigation."

CROSS REFERENCE: For conformation to farm units, see § 2211.7–4(a)(2).

Subpart 2325—Bureau of Indian Affairs

AUTHORITY: See provisions of this Subpart 2325 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 2325.1 Designation of Indian reservations in Alaska.

(a) The inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes (5 U.S.C. 485), to supervise the public business relating to the Indians includes the supervision over reservations in the State of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit. Opinion of the solicitor, May 18, 1923 (49 L.D. 592).

(b) The act of May 1, 1936 (49 Stat. 1250; 48 U.S.C., Sup., 358a, 362) extends certain provisions of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), known as the Wheeler-Howard Act, to Alaska, and provides for the designation of Indian reservations in the State.

(c) The act of May 31, 1938 (52 Stat. 593; 48 U.S.C. 353a), authorizes the Secretary of the Interior in his discretion to withdraw, subject to any valid existing rights, and permanently reserve, small tracts of not to exceed 640 acres each of the public domain in Alaska, for schools, hospitals, and such other purposes as may be necessary in administering the affairs of the Indians, Eskimos, and Aleuts of Alaska.

PART 2330—NATIONAL DEFENSE AGENCIES

Subpart 2331—Department of Defense

§ 2331.1 Withdrawals or reservations for the Department of Defense under the Act of 1958.

(a) When sections 1, 2, and 3 of the Act of February 28, 1958 (72 Stat. 27), govern, the Secretary will submit to the Congress a report on the bill introduced to effect the proposed withdrawal or reservation with such recommendations as he may determine necessary or desirable on the basis of such information as may be available to him.

(b) When an act of Congress effecting a withdrawal or reservation is approved, the authorized officer of the Bureau of Land Management will have a notice published in the FEDERAL REGISTER specifying the date and hour the lands to the extent not withdrawn, reserved, or restricted by the act shall be relieved of the segregative effect of the application by the Department of Defense.

(c) Should the proposed legislation to effect the withdrawal or reservation fail to be passed by Congress or approved by the President, the authorized officer of the Bureau of Land Management will have a notice published in the FEDERAL REGISTER, after this fact is known or after the close of the final session of the Congress in which the bill referred to in paragraph (a) of this section was introduced, whichever comes first, specifying the date and hour that the lands will be relieved of the segregative effect of the application by the Department of Defense. In the case of notices to be published on bills referred to in paragraph (a) of this section where no action has been taken by the Congress, no publication will be made until 90 days after the date of closure of the aforementioned final session of Congress.

(R.S. 2478; 43 U.S.C. 1201)

Group 2400—Classification and Designations

PART 2410—LAND CLASSIFICATION

Subpart 2410—Land Classification; General

Sec.
2410.0–2 Objectives.
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Subpart 2411—Procedures

2411.1 Classification.
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2411.1–2 Preliminary determination.
2411.1–3 Proposed decision.
2411.1–4 Protests; initial decision.
2411.1–5 Right to occupy or settle.
2411.2 Administrative review.
2411.3 Preference right of petitioner—applicants.
2411.4 Allowance and entry.

AUTHORITY: The provisions of this Part 2410 issued under sec. 2478, Revised Statutes, 43 U.S.C. 1201, as amended; sec. 7, 8(b), Act of June 28, 1934, 48 Stat. 1272; 43 U.S.C. 315 f and g, as amended; sec. 2455, Revised Statutes, 48 Stat. 1274; 43 U.S.C. 1171 as amended; Act of June 1, 1938, 53 Stat. 609, 43 U.S.C. 682 a–e, as amended; Act of June 14, 1926, 44 Stat. 741, 43 U.S.C. 869, 869:1–4 as amended, Act of August 30, 1949, 63 Stat. 679, 48 U.S.C. 364 a–e as amended.

§ 2410.0–2 Objectives.

The statutes cited in § 2410.0–3 authorize the Secretary of the Interior, in his discretion, to classify land or otherwise to take appropriate steps looking to its disposition, subject to requirements of the applicable statutes. It is the policy of the Secretary to specify those criteria which will be considered in the exercise of his discretion.

§ 2410.0–3 Authority.

(a) (1) All vacant public lands, except those in Alaska, have been, with certain exceptions, withdrawn from entry, selection, and location under the nonmineral land laws by Executive Order 6910, of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto, and by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315a). Section 7 of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315f), as amended, authorizes the Secretary of the Interior in his discretion to examine and classify and open to entry, selection, or location under applicable law any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, or within a grazing district established under that act; which he finds are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lien, exchange, or scrip rights or land grant.

(2) Classification under section 7 is a prerequisite to the approval of all entries, selections, or locations under the following parts of this chapter, except as they apply to Alaska and with certain other exceptions: Original, Additional, Second, and Adjoining Farm Homesteads—Subpart 2211; Enlarged Homesteads—Subpart 2211; Indian Allotments—Subpart 2212; Desert Land Entries—Subpart 2226; Reclamation of Arid Lands in Nevada (Pittman Act)—Subpart 2225; Recreation and Public Purposes Act—Subpart 2232; State Grants for Educational, Institutional, and Park Purposes—Subpart 2222; Scrip Selections—Subpart 2221, and Exchanges for the Consolidation or Extension of National Forests, Indian Reservations or Indian Holdings—Subpart 2244.

(b) Section 8(b) of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, authorizes the Secretary of the Interior, when public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district established under that act and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands. The regulations governing such exchanges are contained in Subpart 2244 of this chapter.

(c) Section 14 of the Act of June 28, 1934 (48 Stat. 1274; 43 U.S.C. 1171), as amended, authorizes the Secretary of the Interior in his discretion to order into market and sell at public auction isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not exceeding 760 acres the greater part of which are mountainous or too rough for cultivation. The regulations governing such sales are contained in Subpart 2243 of this chapter.

(d) The Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682 a–e), as amended, authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands for lease or sale. The regulations governing leases and sales under this act are contained in Subpart 2233 of this chapter.

(e) The Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869, 869 1–4), as amended, requires the Secretary of the Interior, in the exercise of his discretion to make a determination that land is to be used for an established or definitely proposed project, and in the case of Alaska authorizes him to classify certain classes of public lands for lease or sale for recreation or other public purposes. The regulations governing lease and sale of land under this act are contained in Subpart 2232 of this chapter.

(f) The Alaska Public Sales Act of August 30, 1949 (63 Stat. 679; 48 U.S.C. 364 a–e), authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands in Alaska for public sale for industrial or commercial purposes. The regulations governing sales of land under this act are contained in Subparts 2241 and 2245 of this chapter.

§ 2410.0–4 Responsibilities.

(a) The authority of the Secretary of the Interior to classify lands and make other determinations in accordance with the regulations of this part has been delegated to persons authorized to act in his name; to the Director of the Bureau of Land Management and persons authorized to act in his name; to State Directors of the Bureau of Land Management and to any person authorized to act in the name of a State Director.

(b) Classification and other determinations in accordance with the regulations of this part may be made by the authorized officer without applications or petitions having been filed for the lands.

§ 2410.0–6 Criteria.

(a) *General criteria.* Factors to be considered in any classification action or other determinations authorized by statutes cited in § 2410.0–3 are as follows:

(1) The capability, suitability, availability and physical characteristics of the lands for the purposes for which they are sought or for any other purposes for which the public land laws were enacted.

(2) Potential demand for the land for public purposes which may require its retention in Federal ownership.

(3) Results of change of land use in terms of benefit or detriment to present or future Federal, State, or local interests. In applying this criterion, comments and views of officials of the Federal agencies, States, counties, municipalities, and other public agencies affected, and private citizens, will be sought and considered where practicable.

(4) Consideration will be given to whether land is subject to mineral permits or leases issued or applied for, or is classified, withdrawn, or reported as valuable for any leasable mineral or lies within the known geologic structure of a producing oil or gas field.

(b) *Additional criteria applicable to agricultural entry.* (1) In the determination whether land will be classified and opened to entry under the regulations of Subparts 2211, 2225 and 2226 of this chapter there will be taken into consideration the physical and economic suitability of the land for cultivation, including such factors as soil and water characteristics, topography, climate, location, and accessibility. Consideration may be given to Federal policies affecting the agricultural economy.

(2) When it is determined that the cultivation of land otherwise suitable for agricultural entry under regulations of Subparts 2211, 2225, and 2226 of this chapter would endanger the supply of adequate water for existing users or cause the dissipation of water reserves, such land will not be classified and opened to agricultural entry under section 7 of the Taylor Grazing Act.

(3) Land will be classified for entry under the agricultural land laws (Subparts 2221, 2225, and 2226 of this chapter) only if there is available to the land sufficient water to permit agricultural development of its cultivable portions. Views of States or their agencies having authority in determining the beneficial use of water shall be considered.

(c) *Private exchange criteria.* In the determination whether an offer to exchange lands of equal value under authority of section 8(b) of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, meets the statutory requirement that the public interest shall be benefited thereby the following factors will be taken into consideration:

(1) The effect upon Federal programs of aquisition of the offered land.

(2) The effect upon Federal programs of disposition of selected lands.

(3) The anticipated cost to the Federal Government of appraisals to determine equality of values, and the disruption of other programs which this may occasion.

Subpart 2411—Procedures

§ 2411.1 Classification.

§ 2411.1–1 Filing of petition.

(a) When land must be classified or designated pursuant to the authorities cited in § 2410.0–3 before an application for entry may be approved, the application together with a Petition for Classification on a form approved by the Director (hereinafter referred to collectively as a "petition-application") will be filed in accordance with the provisions of § 1821.2 of this chapter. Lists indicating the proper office for filing of application may be obtained from the Director or any other officer of the Bureau of Land Management. Copies of the Petition for Classification form and the application forms may be obtained from the land offices or from the Bureau of Land Management, Washington 25, D.C.

§ 2411.1–2 Preliminary determination.

Upon the filing of a petition-application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to examine and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-application has been filed.

§ 2411.1–3 Proposed decision.

(a) The State Director shall make and issue a proposed classification decision which shall contain a statement of reasons in support thereof. The proposed decision shall be served upon each petitioner-applicant for the land and upon any grazing permittee, licensee, or lessee on the land. If the record discloses that comments on the classification have been received from officials or agencies referred to in subsections of §§ 2410.0–6 (a) (3) or (b) (3), an information copy of the proposed classification decision shall be mailed to such persons or agencies.

(b) When there are multiple petition-applications for the same land, the proposed decision shall state which petition-application if any will be entitled to preference under applicable law; or where no petition-application has been filed for the purpose for which the land is proposed to be classified, the proposed decision shall so state. (1) When multiple petition-applications have been filed for the same land, the one first filed for the purpose for which it is proposed to classify the land will be entitled to preference under applicable law.

(2) When two or more petition-applications have been simultaneously filed for the purpose for which it is proposed to classify the land, the petition-application entitled to preference will be the first to be selected by drawing.

(3) If no petition-application has been filed for the purpose for which it is proposed to classify the land, the proposed decision shall state that the land will be opened to entry after public notice in accordance with applicable regulations for the purpose for which it may be classified.

§ 2411.1–4 Protests; initial decision.

(a) For a period of thirty days after the proposed decision on land classification has been served upon the petitioner-applicants and grazing permittees, licensees, lessees protest as to the proposed classification may be filed by any interested party with the State Director. No particular form of protest is required under this subparagraph, it being the intent of this procedure to afford the State Director the opportunity to review the proposed decision in the light of such protests. (1) If no protests are filed within the time allowed, the proposed classification action shall be issued as the initial decision of the State Director, and shall be served on the petitioner-applicants and upon grazing permittees, licensees, or lessees.

(2) If protests are timely filed, they shall be reviewed by the State Director, who may require statements or affidavits, take testimony, or conduct further field investigations as are deemed necessary to establish the facts. At the conclusion of such review, the State Director shall issue an initial decision, either revised or as originally proposed, which shall be served on all interested parties.

§ 2411.1–5 Right to occupy or settle.

The filing of a petition-application gives no right to occupy or settle upon the land. A person shall be entitled to the possession and use of land only after his entry, selection or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

§ 2411.2 Administrative review.

(a) For a period of sixty days after service thereof upon all parties in interest, the initial decision of the State Director shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review.

(b) If, sixty days from receipt by parties in interest of the initial decision of the State Director, the Secretary has not either on his own motion, on motion of any protestant, petitioner-applicant, or the State Director, exercised supervisory authority for review, the initial decision shall become the final order of the Secretary, reviewable in the courts as otherwise provided by law.

(c) If supervisory authority of the Secretary is exercised, the initial decision of the State Director shall be deemed vacated, and the final Departmental decision shall be issued by the Secretary of the Interior and served upon all parties in interest.

(d) No petitioner-applicant or protestant to a proposed decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section nor to appeal under provisions of Parts 1840 and 1850 of this chapter.

§ 2411.3 Preference right of petitioner-applicants.

Where public land is classified for entry under section 7 of the Taylor Grazing Act or under the Small Tract Act pursuant to a petition-application filed under this part, the petitioner-applicant is entitled to a preference right of entry, if qualified. If, however, it should be necessary thereafter for any reason to reject the application of the preference right claimant, the next petitioner-applicant in order of filing shall succeed to the preference right. If there is no other petitioner-applicant the land may be opened to application for the purpose for which it is classified or the classification may be revoked by the authorized officer.

§ 2411.4 Allowance and entry.

After lands are classified and opened for entry pursuant to the regulations of this part, all the laws and regulations governing the particular kind of entry, locations, selection, or other dispositions must be complied with in order for title to vest or other interests to pass.

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PART II
Section 2

FEDERAL REGISTER

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Department of the Interior

Bureau of Land Management

Revision of Regulations—Continued

SUBCHAPTER C—MINERALS MANAGEMENT
[3000]

Group 3000—Minerals Management; General

PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

Sec.

3001.0–5 Definitions
3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Group 3100—Public Domain Leasing Under 1920 Act

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

Subpart 3100—Public Domain Leasing Under 1920 Act; General

Sec.

3100.0–2 Objectives of the leasing act.
3100.0–5 Definitions.
3100.1 Lands to which leasing act does not apply.
3100.2 Survey for leasing.
3100.3 Multiple development.

Subpart 3101—Lessees

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3101.2 Rights of aliens.
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Subpart 3103—Reserved, Withdrawn or Segregated Lands

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Subpart 3104—Applicants and Holders

3104.1 Simultaneous applications or offers for lease.
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3104.3 Limitation on time to institute suit to contest a Secretary's decision.

Subpart 3105—Helium

3105.1 Recovery.

Subpart 3106—Bonds

3106.1 Bonds with individual sureties.

AUTHORITY: The provisions of this Part 3100 issued under sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301, as amended; 30 U.S.C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058 as amended; 30 U.S.C. 285.

Subpart 3100—Public Domain Leasing Under 1920 Act; General

§ 3100.0–2 Objectives of the leasing act.

The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), the act of February 7, 1927 (44 Stat. 1057; 30 U.S.C., 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U.S.C., 271–276) as amended, hereinafter called "the act", provide for the leasing of oil and gas, coal, potassium, sodium, phosphate, and oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in § 3100.1.

§ 3100.0–5 Definitions.

(a) *Sole party in interest; statement of interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes but is not limited to record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests". Any claim (existing at the time when the lease is issued) or any prospective or future claim (which is based on conditions existing at the time when the lease is issued) to an advantage or benefit from a lease, or any participation or any defined or undefined share in any increments, issues, or profits, which may be derived from or which may accrue in any manner from the lease pursuant to any agreement or understanding existing at

the time when the lease is issued, is deemed to constitute an "interest" in the lease. (For requiring statements in oil and gas applications, see § 3123.2.)

§ 3100.1 Lands to which leasing act does not apply.

The mineral leasing act does not apply (a) to lands containing the mineral deposits named in § 3100.0–3 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

§ 3100.2 Survey for leasing.

Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under a prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has been accepted and the plat filed in the land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 3100.3 Multiple development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

Subpart 3101—Lessees

§ 3101.1 Who may hold leases and permits.

Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 3101.2 Rights of aliens.

Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases, if the laws of their country do not deny similar or like privileges to citizens of the United States. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied.

§ 3101.3 Interests held in common.

An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

Subpart 3102—Fees and Rentals

§ 3102.1 Filing fees.

Offers for noncompetitive oil and gas leases and all applications for prospecting permits, leases or licenses, excepting licenses to relief agencies must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

§ 3102.2 Payment of rentals.

(a) Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Manager of the appropriate land office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the United States Geological Survey. Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the United States Geological Survey.

§ 3102.3 Waiver, suspension, or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(2) Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3102.4 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the regional oil and gas supervisor for oil and gas leases, and in the office of the regional mining supervisor for all other leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the regional oil and gas supervisors and the regional mining supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted. As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of conservation. Complete information must be furnished showing the necessity of such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(d) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Secretary, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(f) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation. The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

§ 3102.5 Oil and gas leases involved in proceedings under the Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

Subpart 3103—Reserved, Withdrawn or Segregated Lands

§ 3103.1 Reserved or segregated lands.

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 3103.2 Special stipulations.

Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

Subpart 3104—Applicants and Holders

§ 3104.1 Simultaneous applications or offers for lease.

(a) Where applications or offers received by mail or filed over the counter at the same time are in conflict the right of priority of filing will be determined by public drawing.

(b) The priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3123.9, whether or not they are in conflict, will be determined by public drawing in the manner provided in § 2311.2–3 of this chapter.

§ 3104.2 Bona fide purchasers.

(a) The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) The commencement and conclusion of all such proceedings shall be

noted promptly upon the serial register relating to the particular lease or option or other interest involved.

(d) Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(e) If during an such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3104.3 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

Subpart 3105—Helium

§ 3105.1 Recovery.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

Subpart 3106—Bonds

§ 3106.1 Bonds with individual sureties.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

PART 3120—OIL AND GAS

Subpart 3120—Oil and Gas; General

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Subpart 3129—Termination

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AUTHORITY: The provisions of this Part 3120 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3120—Oil and Gas; General

§ 3120.1 General provisions.

§ 3120.1–1 Applicability of amendatory act to existing leases.

Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that act only where the amendatory act so

provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

§ 3120.1–2 Acreage limitations.

(a) No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, except that in the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(1) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(3) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper land office.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(c) No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights.

(d) At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the appropriate land office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

(e)(1) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be cancelled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be cancelled only to the extent of the excess acreage.

(2) If any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interests in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, files an application or offer, or a group of applications or offers (filed simultaneously), or options or interests in options or group thereof which causes him to exceed the acreage limitation, the application or offer, or group of applications or offers, causing the excess holding, will be rejected in its entirety.

(3) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or, if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(4) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

§ 3120.1–3 Options.

(a) No option to acquire any interests in an oil and gas lease shall be enforceable if entered into for a period of more than three years (inclusive of any renewal period, if provided for in the option) without the prior approval of the Secretary. The acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. If the option covers only a part of the optionor's interest in the acreage included in a lease, the acreage to which the option is applicable shall be fully charged to the optionor, and a share thereof shall also be charged to the optionee as his interest may appear. Upon the exercise of the option, the acreage shall be charged to the parties pro rata as their interests may appear. An unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the appropriate land office.

(1) No option or renewal thereof executed after September, 1960, shall be enforceable until notice thereof has been filed in the appropriate land office. No such notice shall be required for options or renewals executed prior to September 2, 1960. Each such notice shall include (i) the names and addresses of the parties thereto; (ii) the serial number of the lease or application for lease to which the option is applicable; (iii) a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto; and (iv) the interest to be conveyed and retained on exercise of the option. Such notice shall be subscribed by all parties to the option or their duly authorized agents. The filing of an executed copy of the option containing the above information shall satisfy the foregoing requirement. In addition, the notice of option must contain or be accompanied by a signed statement, by the holder of the option, that he is the sole party in interest in the option; if not, he shall

set forth the names and nature and extent of the interest therein of the other interested parties, the nature of the agreement between them if oral, and a copy of such agreement, if written.

(b) An option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and three years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 3121.1) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

(e) Each holder of an option must file in the appropriate land office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively (1) his name and the name and address of each grantor of an option held by him, the serial number of every lease, application or offer for lease subject to option; (2) date and expiration date of each option; (3) number of acres covered by each option; (4) aggregate number of options held in each State, and total acreage thereof; and (5) a statement of his interest and obligation under each option; provided, that the statement of his interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under paragraph (a) of this section and there have been no changes in such interests and obligations since such filing. Option statements covering lands in the State of California shall be filed in the land office at Sacramento, California. The failure of the holder of an option to file such statement shall render the option unenforceable by him, but this shall not diminish the acreage deemed to be held under option by the optionee in computing the amount chargeable and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law.

(f) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

§ 3120.2 Known geological structures and naval reserves.

§ 3120.2–1 Lands within one mile of naval petroleum or helium reserves.

No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

§ 3120.2–2 Boundaries of known geologic structures.

(a) The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields, and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946.

(b) Determinations of "structures defined" will be followed, as soon as practicable, by the filing in the appropriate land office of maps or diagrams showing the structure boundaries, and by publication in the FEDERAL REGISTER of notices that the determinations have been made. Because determinations of "structures undefined" are usually of a more temporary nature, maps or diagrams thereof will not be filed and notices thereof will not be published; however, a memorandum of each such determination will be filed in the appropriate land office and will be available for public inspection. Additional information concerning the procedures used in making the determinations may be obtained from the Geological Survey, Washington 25, D.C.

(c) In accordance with long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field. Ernest A. Hanson, A–26375 (May 29, 1952), and cases cited therein. All determinations are subject to change at any time upon receipt of further information through the drilling of wells and other sources. Accordingly, lessees or applicants for leases should not rely upon the maps, diagrams, determinations or notices thereof, as currently controlling documents.

(d) Any lessee or his operator may apply to the Director of the Geological Survey for a determination whether the land in his lease is inside or outside the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946.

§ 3120.3 Drainage.

§ 3120.3–1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3120.3–2 Protection from drainage.

(a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

(b) The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of one year from the discontinuance of such payment, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3120.3–3 Leasing of wildlife refuge lands, game range lands and coordination lands.

(a) *Definitions*—(1) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the United States Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(2) *Game range lands.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the United States Fish and Wildlife Service.

(3) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the United States Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10,

1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the United States Fish and Wildlife Service as the custodial agency of the Government.

(4) *Alaska wildlife areas.* Such lands are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the United States Fish and Wildlife Service.

(b) *Leasing policy and procedure.* (1) No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in subparagraph (2) of this paragraph. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations in the Bureau of Land Management stipulation on a form approved by the Director.

(2) In instances where it is determined by the Geological Survey that any of the lands mentioned in paragraph (a)(1), or any of the lands mentioned in paragraph (a) (2), (3) and (4) of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the United States Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

(3) As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the United States Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. As to coordination lands, representatives of the Bureau of Land Management and the United States Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing.

(4) The remaining lands in paragraph (a) (2) and (4) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the Fish and Wildlife Service and the Bureau of Land Management. The remaining lands in paragraph (a) (3) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the United States Fish and Wildlife Service, and the Bureau of Land Management.

(c) *Publication and filing of agreements; filing of lease offers.* The agreements referred to in paragraph (b) (3) of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose. Lease offers for such lands will not be accepted for filing until the tenth day after the agreements and supplemental maps or plats are noted on the land office records.

(d) *Suspension of pending applications.* All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in paragraph (b) (3) of this section shall have been completed.

(e) *Lands in requested withdrawal.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

NOTE:

Stipulations. For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 F.R. 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) as used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior:

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in acres of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner

in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements:

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes, ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife.

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads, bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2) (m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer.

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazard.

§ 3120.4 Preference right of patentee or entryman to a lease.

(a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 3120.5 Lands in entries or claims not impressed with a reservation of oil and gas.

(a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in the event that reclassification is denied, or to appeal. If he does neither, or he is unsuccessful, the entry or settlement rights and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States. In such circumstances a lease will be granted to the offeror, all else being regular, unless the entryman or settler has a preference right.

§ 3120.6 Showing required for unsurveyed lands.

Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

Subpart 3121—Cooperative Conservation Provisions

§ 3121.1 Cooperative or unit plans.

The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. For the extension of leases committed to a unit plan, see § 3127.4.

§ 3121.2 Applications for approval of plan.

The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey for the region in which the unit area is situated.

§ 3121.3 Communitization or drilling agreements.

(a) The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion

thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 3121.4 Approval of operating, drilling, or development contracts.

(a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the appropriate land office manager, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 3121.5 Combinations for joint operation or for transportation of oil.

Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of estblishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section together with enough copies to permit retention of 5 copies by the Department after approval should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law. Rights-of-way for oil and gas pipe lines may be granted as provided for in § 2234 of this chapter.

§ 3121.6 Subsurface storage of oil or gas.

(a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

Subpart 3122—Issuance of Leases

§ 3122.1 Classes and term.

(a) All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent.

(b) All competitive leases shall be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and noncompetitive leases for a primary term of ten years and so long thereafter as oil or gas is produced in paying quantities.

§ 3122.2 Dating of leases.

All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 3122.3 Leases within unit areas.

(a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

§ 3122.4 Exchange and renewal leases.

§ 3122.4–1 Conditions.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 3125.1 thru 3125.3. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3122.4–2 Application for renewal.

(a) Twenty-year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3125.1 through 3125.3. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3123.1(b) at least 90 days, but not more than six months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application

for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 3122.4–3 Action on application.

(a) If the outstanding obligations in excess of five percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the cost of operations, including the payment of over-riding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

(b) If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3122.4–4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

Subpart 3123—Noncompetitive Leases

§ 3123.1 Application.

(a) Except as provided in § 3123.9, to obtain a non-competitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office.

(b) Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land deposits in States for which there are no land offices, with the Director of the Bureau of Land Management, Washington, D.C., 20240. (Offers for lands or minerals deposits in the following States should be filed at the land office named: North Dakota or South Dakota land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico.) For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) If there is any variation in the land descriptions among the five copies of the official forms, the copy showing the date and time of receipt in the land office will control.

(d) Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. An offer may not include more than 2,560 acres except where the rule of approximation applies. The lands in the offer must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey, or where the land is surrounded by lands not available for leasing under the act.

§ 3123.2 What should accompany offer.

Each offer, when first filed, shall be accompanied by:

(a) A filing fee of $10 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part.

(b) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(c)(1) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see § 3123.4)

(2) A statement over the offeror's signature setting forth whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor and options exceed 246,080 acres in the same State of which no more than 200,000 acres are under option, or exceed 300,000 acres in each of the northern and southern leasing districts of Alaska, of which no more than 200,000 acres are held under option in each of said leasing districts and in addition, if the offeror is an individual, a statement of his citizenship.

(3) A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. All interested parties must furnish evidence of their qualifications to hold such lease interest.

(d)(1) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3120.1–2. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(2) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole

and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney in fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney in fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney in fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney in fact will be acceptable as compliance with the provisions of the regulations.

(e) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(f) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(g) If the offeror is a corporation the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens for those having addresses. outside of the United States, and (4) the names and addresses of the stockholders holding 20 percent or more of the stock of the corporation. When the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate showing of citizenship and holdings of stockholders owning or controlling 20 percent or more of the stock of any class must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

§ 3123.3 Rejection of offer.

(a) When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3123.9, all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3104.2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

(b) Except as provided in § 3123.4 an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

§ 3123.4 Curable defects.

An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(a) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(b) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

(c) An offer completed in pencil or script.

(d) An offer on a lease form not currently in use.

(e) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

§ 3123.5 Issuance of lease; assignments and withdrawal of offer.

(a) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(c) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on the required form describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 3122.2.

(d) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

§ 3123.6 Death of offeror.

If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under § 3123.2(d) concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3123.2(d) except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3123.7 Determination of priorities.

No lease shall be issued before final action has been taken on (a) any prior offer to lease the land, (b) any subsequent offer to lease the land that is based upon an alleged preferential right, and (c) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land.

§ 3123.8 Description of lands in offer.

(a) If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range. If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(b) In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impracticable to furnish a metes and bounds description, as required in paragraph (a) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such over-all area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3120.1–2 and the maximum or minimum area to be included in a lease pursuant to § 3123.1. The tract should be shown in outline on a current quadrangle sheet published by the United States Geological Survey or such other map as will adequately identify the lands described.

(c) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(1) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(d) The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after the effective date of this section will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3123.9 Availability of lands.

(a) Lands in cancelled or relinquished leases or in leases which terminate by operation of law for non-payment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

(b) On the third Monday of each month, or the first working day thereafter, if the land office is not officially open on the third Monday, there will be posted on the bulletin board in each land office a list of the lands in leases which expired, were cancelled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, in accordance with paragraph (c) of this section, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3123.8, i.e., by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds. The leasing units will be established to coincide to the extent possible with the lands in an expired, cancelled, relinquished or terminated lease except that where two or more such leases were contiguous and contained a total of 640 acres or less, they may be consolidated into one leasing unit.

(c) Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee. By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing. Only one entry card will be drawn for each numbered leasing unit.

(1) Only one complete leasing unit, identified by parcel number, may be included in one entry card. Lands not on the posted list may not be included therein.

(2) The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

(3) Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the United States Treasury upon execution of the lease in behalf of the United States. However, if an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him, and if the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which such entry card was submitted shall be included in a simultaneous filing

drawing procedure to be held during the next or a following month thereafter. Unsuccessful drawees will be notified accordingly by the return of their respective entry cards.

(d) If more than one offer to lease all or any part of the acreage covered by an expired, cancelled, relinquished, or terminated lease is filed during the period provided for in paragraph (b) of this section, their priorities will be determined by a public drawing.

(e) Offers to lease which cover lands not within the foregoing categories and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(f) If no offers to lease all or any portion of the lands in the expired, cancelled, relinquished or terminated leases are received during the period provided for in paragraph (b) of this section the lands for which no offers are received will thereafter become subject to lease in accordance with regulations in this part.

Subpart 3124—Competitive Leases

§ 3124.1 Designation and offer of lands for lease.

The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

§ 3124.2 Notice of lease offer.

Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize. The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3124.3 Qualifications of successful bidder.

The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 3123.2(c). If the successful bidder is a corporation, it must also file a statement similar to that required by § 3123.2(f).

§ 3124.4 Award of lease.

(a) Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 3126.1. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

(b) If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3124.5 Form of lease.

Competitive leases will be issued on a form approved by the Director, and the rentals and royalties payable thereunder will be set forth in a schedule made a part thereof.

Subpart 3125—Rentals and Royalties

§ 3125.1 Rentals.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after September 2, 1960, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of 50 cents per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of $2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the

date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

§ 3125.2 Minimum royalty.

On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum ryality of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 3125.3 Royalty on production.

(a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska which issued and was outstanding prior to May 3, 1958, who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 3125.4 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

Subpart 3126—Bonds

§ 3126.1 Types of bonds.

(a) The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $2 per acre annual rental but in no case less than $1,000 nor more than $10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

(c) All leases shall provide that where a $10,000 bond is not already being maintained a general lease bond in the penal sum of $10,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $10,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement

which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

(d) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 3106.1 may be furnished or the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U.S.C. 351–369), or at the rate of $25,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State constitutes two units. In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond. Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $150,000 or a unit bond, as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any nationwide or unit bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3126.2 Form of bonds.

The bonds furnished will be on forms approved by the Director.

Subpart 3127—Continuation or Extension of Lease

§ 3127.1 Single extension.

(a) Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part which issued prior to September 2, 1960, shall be entitled, to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) The application for extension must be filed, within ninety days before the expiration date of the lease, on a form approved by the Director. Application for Extension of Oil and Gas Lease",[5] or unofficial copies of that form in current use and must be accompanied by a filing fee of $10 which will be retained as a service charge even though the application is later withdrawn or rejected and, unless previously paid, the sixth year's rental: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes or advertising. The official form or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

(c) If during the 90 day period prior to the expiration date of the lease, the record title holder, assignee or operator files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

(d) Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

(e) Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (1) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (2) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

(f) The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

(g) Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands covered by such expired lease will be subject to the filing of new lease offers only as provided in § 3123.9.

§ 3127.2 Continuation of lease as a result of actual drilling operations.

Any lease on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities. As used in this section "primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

§ 3127.3 Continuation of lease on termination of production.

(a) A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

(b) No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: *Provided,* That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

§ 3127.4 Extension for terms of cooperative or unit plan.

(a) Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

(b) Any other lease issued under any section of the act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided,* That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

(c) Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committeed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3127.5 Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

Subpart 3128—Assignments or Transfers

§ 3128.1 Assignments or transfers of leases or interests therein.

Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 3128.2 and 3128.3. No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement required by this section. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 3128.2 Requirements for filing of transfers.

(a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offer or under § 3123.2.

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties on a form approved by the Director, or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of the official form and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. The official form, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3128.6 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(4) Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3123.8.

(30 U.S.C. 189, 49 U.S.C. 1201)

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application, and the statement required by § 3123.2(b).

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide or statewide bond no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information relating to citienship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 3123.6.

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 3129.2.

§ 3128.3 Separate assignments required for transfer of record titles to leases.

A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the

qualifications of the assignee will be sufficient.

§ 3128.4 Effect of assignment of particular tracts or undivided interests therein.

An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3128.5 Extension of leases segregated by assignment.

(a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

(c) Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3128.6 Royalty interests in oil and gas leases and assignments thereof.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests must be filed for record purposes but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3120.1–2 and by the statement as to over-riding royalties required by § 3125.4. If any portion of this statement is found to be false the assignment shall be invalid.

Subpart 3129—Termination

§ 3129.1 Relinquishment of leases or portions thereof.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3129.2 Cancellation and termination of lease.

(a) Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 3127.1 on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate Land Office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in § 3123.9.

(b) Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be cancelled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

(c) Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

PART 3130—COAL LEASES, PERMITS AND LICENSES

Subpart 3130—Coal Leases, Permits and Licenses; General

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AUTHORITY: The provisions of this Part 3130 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3130—Coal Leases, Permits and Licenses; General

§ 3130.0–3 Statutory authority.

Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U.S.C. 201, 202–208), as amended, authorize the Secretary of the Interior to:

(a) Divide into leasing units and award leases of coal lands and coal deposits owned by the United States.

(b) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits; and

(c) Issue limited licenses or permits to prospect for, mine and take for use coal from public lands.

§ 3130.1 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for coal lease, permit or license is within a withdrawal which does not preclude disposition of the coal deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a coal lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

Subpart 3131—General Provisions

§ 3131.1 Acreage limitations.

(a) Except where the rule of approximation applies, a permit or lease may not exceed 2,560 acres. The rule of approximation applies to applications for leases or prospecting permits only where elimination of the smallest legal subdivision involved would result in a deficiency of area under 2,560 acres greater than the excess over 2,560 acres resulting from the inclusion of such subdivision. A permit shall include contiguous tracts, or tracts in reasonably compact form. A lease shall include contiguous tracts, except in cases where noncontiguous tracts can be efficiently worked as a single mine or unit. Except as hereinafter stated, no person, association, or corporation may hold at one time coal leases or permits exceeding 10,240 acres in any one state, whether directly through the ownership of such leases and permits, or interests therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interests therein, and applications therefor. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation, unless he is the beneficial owner of more than ten percent of the stock or other instruments of ownership or control of such association or corporation.

§ 3131.2 Qualifications of applicants.

(a) Leases and prospecting permits may be issued to citizens of the United States, associations of citizens and corporations organized under the laws of the United States or any State thereof, including a company or corporation operating a common-carrier railroad, and to municipalities. Limited licenses or permits for the mining of coal may be issued to citizens, associations of citizens and municipalities.

(b) Every applicant for coal permit or lease, other than a company or corporation operating a common-carrier railroad, must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate 10,240 acres in any one State.

(c) Every company or corporation operating a common-carrier railroad must make a statement that it needs the coal for which it seeks a permit or lease for its own use for railroad purposes; that it operates main or branch lines in the State in which the lands involved are located; that the aggregate acreage in the permits, leases and applications therefor in which it is interested directly or indirectly does not exceed 10,240 acres; and that it does not hold more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

(d) Every applicant for lease or permit must also furnish a showing as to the need for additional coal production which cannot otherwise be reasonably met, or, if such a showing of need cannot be made, a statement of the reasons why a lease or permit is desired.

§ 3131.3 Equitable rights; holders of leases or permits affecting certain lands or coal deposits in Oklahoma.

(a) Equitable rights of persons who, prior to February 25, 1920, occupied and improved or claimed coal lands in good faith may be recognized in awarding leases of such lands. In the case of an award of a lease to such a person the rents and royalties will be established at rates not less than the minimum provided for leases under the act.

(b) A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, covering certain coal lands or coal deposits in Oklahoma which the Choctaw and Chickasaw Nations agreed to convey to the United States in a contract ratified by the act of June 24, 1948 (62 Stat. 596), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to the expiration date of the current lease.

§ 3131.4 Permits, leases and licenses for lands disposed of with reservation of coal.

Where lands included in a permit, lease or license have been or may be disposed of with reservation of the coal deposits, a permittee, lessee or licensee must make full compliance with the law under which such reservation was made. See the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81); June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 377), and other laws authorizing such reservation.

Subpart 3132—Leases

§ 3132.1 Requirements.

§ 3132.1–1 Leasing units.

(a) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(b) All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

(c) Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

§ 3132.1–2 Leasing of additional coal deposits.

(a) Under section 3 of the act (30 U.S.C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 2,560 acres, except where the rule of approximation applies. The lessee shall file his application for modification in duplicate in the proper land office describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification. Upon determination by the authorized officer that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them they may be offered as provided in § 3132.4–2.

(b) Under section 4 of the act (30 U.S.C. 204), upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within three years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper land office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit they will be offered for leasing as provided in § 3132.4–2. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease which must not exceed 2,560 acres; otherwise, a separate lease may be issued.

(c) Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file the consent of surety and the acceptance by the lessee of the applicable regulations.

(d) A filing fee of $10, which will be retained as a service charge in any event, must accompany an application for modification of a lease under paragraph (a) or (b) of this section.

§ 3132.2 Application for lease.

(a) No specific form is required, but the application should cover the following points:

(1) The applicant's name and address.

(2) Proof of citizenship: If applicant is an individual, a statement as to whether native born or naturalized; if an association (including a partnership), it must submit a certified copy of the articles of association and a statement by its members as to their citizenship and holdings. If the applicant is a corporation, it must submit statements showing (i) the State in which it is incorporated; (ii) that it is authorized to hold leases and permits for coal deposits, and the names of the officers authorized to act in such matters in behalf of the corporation; (iii) the percentage of the corporate voting stock and of all the stock owned by aliens or those having addresses outside of the United States; and (iv) the name, address, citizenship and acreage holdings of any stockholder owning or controlling 20 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each. A municipality must submit evidence of: (*a*) The manner in which it was organized; (*b*) that it is authorized to hold a permit or lease; and (*c*) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(3) A statement of the interests, direct or indirect, in other coal leases, permits or applications therefor on public lands in the State in which the lease is desired, identifying same by land office and serial number, and that such interests, when added to the acreage covered by the application, do not exceed in the aggregate 10,240 acres in the State. A railroad company or corporation operating a common carrier must state that its interests, together with the acreage covered by the application, do not exceed in the aggregate 10,240 acres.

(4) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the United States Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(5) The showing specified in § 3131.2 (d).

(6) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(7) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(b) All applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations. Where such power of attorney has been filed in the same land office where the application is filed reference thereto by serial number of the record in which it has been filed may be made upon the filing of subsequent applications. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(c) A filing fee of $10, which will be retained as a service charge in any event, must accompany each application.

§ 3132.3 Issuance of leases.

§ 3132.3–1 Compliance bond.

A compliance bond, in no event less than $1,000, will be required prior to the issuance of a lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a

corporate, personal or individual security bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 3132.3–2 Form of lease.

Leases shall be issued on a form approved by the Director.

§ 3132.3–3 Minimum production.

Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act (see § 3102.4). Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

§ 3132.4 Competitive leasing.

§ 3132.4–1 Offer for lease by competitive bidding.

If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided in the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

§ 3132.4–2 Notice of lease offer.

Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will show the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publiaction of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; and (b) that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding is unlawful. See 18 U.S.C. 1860.

§ 3132.4–3 Sale; bidding requirements, action by successful bidder.

(a) When the sale is by public auction, before bidding is commenced by those persons present, the Manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the Manager or other officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in § 3132.2.

(b) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. If the land is surveyed, four lease forms will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3132.4–2, and file a bond as required by § 3132.1. The lease will be dated as of the first day of the month following its issuance unless the succesful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with the requirements of this subsection until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act. If the lease awarded to the successful bidder, is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence, such as specified in § 3131.6(b) in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

§ 3132.5 Readjustment of terms at end of twenty-year periods.

The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period.

§ 3132.6 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3132.7 Cancellation of lease.

(a) If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3132.5 or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) A lease or permit issued pursuant to § 3131.1(d) may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee or permittee to carry on business economically or if the lessee or permittee has divested himself of all or any part of the original 10,240 acres or no longer has facilities for the exploitation of the deposits under lease or permit. However, such lessee or permittee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease or permit should not be canceled.

Subpart 3133—Permits

§ 3133.1 Character of lands.

Permits shall be issued on a form approved by the Director for a period of two years to qualified applicants to prospect unclaimed, undeveloped lands where

prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 3133.2 Rights conferred.

A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

§ 3133.3 Application for permit; permit rental.

An application for a permit must be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing fee of $10 which is not returnable, and by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof but no less than $20, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision. No specific form of application is required. In addition to the requirements of § 3132.2(a) (1) to (5) and (b), the application for a permit should be accompanied by a proposed plan and method for conducting prospecting or exploratory operations on the land setting forth the estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

§ 3133.4 Permit bond.

(a) The applicant must furnish a corporate surety bond or a personal bond on a form approved by the Director conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of $500 except where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85) or the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 377), in which event, a bond on the same form in the sum of $1,000 will be required.

(b) The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant that the permit will be granted when the bond is filed.

§ 3133.5 Extension, relinquishment, cancellation, or termination of permit.

(a) Coal permits may be extended by an authorized officer of the Bureau of Land Management for a period of two years if he finds, after consultation with the Mining Supervisor of the Geological Survey, that the permittee has been unable, with reasonable diligence, to determine the existence or workability of coal deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension. An application for extension must be filed in duplicate within 90 days prior to expiration of the permit and must be accompanied by the third year's rental and a $10 filing fee, which is not returnable. The application must disclose the reasons additional time is considered necessary to complete prospecting work. Extension will be limited to such period, not to exceed the two years, as may be determined to be allowable under the circumstances in each particular case. If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for coal permits.

(b) The permittee may relinquish the entire permit acreage or any portion thereof. A partial relinquishment must specifically describe the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the proper land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(c) Except as provided for in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment in not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of any other coal permit applications. Applications for such permits filed prior to such notation will be rejected.

(d) Where lands embraced in a cancelled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3133.6 Reward for discovery.

(a) A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in a reasonably compact form. An application for preference right lease must be filed in duplicate promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be twenty-five cents for each acre or fraction thereof. The lease, if issued, will be in accordance with the provisions of § 3132 and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

(b) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms,

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittees and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3132.2.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittees and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3132.2, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3132.2.

Subpart 3134—Transfers

§ 3134.1 Transfers, including subleases.

(a) Permits and leases may be transferred, in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 3132.2. If the instrument fails to describe the true consideration, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in triplicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

(b) The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

(c) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(d) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(e) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3133.6(b).

§ 3134.2 Limitation on overriding royalties.

An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he had made substantial investments for improvements on the land covered by the assignment.

Subpart 3135—Limited Coal Licenses

§ 3135.0–1 Purpose of license.

Coal licenses may be issued for a period of two years to individuals and associations of individuals to mine and take coal for their own local domestic need for fuel, but in no case for barter or sale, without the payment of any rent or royalty. Licenses may be issued to municipalities to mine and dispose of coal without profit to their residents for household use. Under such a license a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

§ 3135.1 Area and duration.

(a) A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less and may be revoked at any time. Such license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period.

(b) Licenses to municipalities are limited as to area by the act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 acres for a municipality of not less than 100,000, and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of 4 years from date of issuance, unless renewed; but every such licensee must make to the Bureau of Land Management, an annual report of all operations conducted under such license.

(c) An application for renewal of a license must be accompanied by a filing fee of $10, which will be retained as a service charge even though the application is later withdrawn or rejected.

§ 3135.2 Application for license.

Application for a limited license to mine coal for domestic needs must be filed, in quadruplicate, on a form approved by the Director or its substantial equivalent in the appropriate land office and be accompanied by a $10 filing fee. A municipality must file with the application a showing of (a) the law or charter and procedure taken by which it became and exists a legal body corporate, (b) that the taking of a license is authorized under such law or charter and (c) that the proposed action has been duly authorized by the governing body of the municipality.

§ 3135.3 Licenses to relief agencies.

(a) The Bureau of Land Management, may grant authority to a recognized established relief agency of any State, upon its request, to take government-owned coal deposits within the State in localities where needed to supply families on the rolls of such agency who require coal for fuel for their homes and who are unable to pay for same.

(b) Tracts shall be selected at points convenient to supply the families in the locality thereof, and each family shall be restricted to the amount of coal actually needed for its use, which in no case shall exceed 20 tons annually.

(c) Coal may be taken from such tracts only by those given written authority by the relief agency, and all mining shall be done pursuant to permission and all Federal and State laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

(d) The local relief agency may take coal from available land prior to issuance of license but not earlier than 5 days after it has filed in the land office of the district wherein the land is situated an application for license. No filing fee will be required. In the absence of objections and if the application is otherwise regular, a license will be granted. Pending action on the application for license, the relief agency may continue to take the coal.

PART 3140—POTASSIUM PERMITS AND LEASES

Subpart 3140—Potassium Permits and Leases; General

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Subpart 3144—Transfers

3144.1 Transfers, including subleases.

Subpart 3145—Royalties

3145.1 Overriding royalties.

AUTHORITY: The provisions of this Part 3140 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189, Interpret or apply secs. 1–7, 44 Stat. 1057, 1058, as amended sec. 7, 47 Stat. 151; 30 U.S.C. 281–287.

Subpart 3140—Potassium Permits and Leases; General

§ 3140.0–3 Statutory authority.

(a) Sections 1 to 7 of the act of February 7, 1927, as amended (44 Stat. 1057, 30 U.S.C. secs. 281–287), authorize the Secretary of the Interior to:

(1) Issue permits to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium in public lands or in public lands disposed of with a reservation of such deposits to the United States.

(2) Lease such lands containing valuable deposits of such substances.

(b) As authorized in section 4 of the act, potassium leases may also provide for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described in said section, associated with the potassium deposits.

§ 3140.0–6 Completion of pending applications and prior claims.

(a) Section 6 of the act of February 7, 1927, supra, which repealed the act of October 2, 1917 (40 Stat. 297), excepts valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

(b) As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

Subpart 3141—Area Limitation

§ 3141.1 Area and limitation on holdings.

(a) A lease or permit may not exceed 2,560 acres, except where the rule of approximation applies. The lands in the lease or permit shall be in reasonably compact form entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width. No person, association, or corporation may hold at one time in any one state potassium permits exceeding 51,200 acres, and except as hereinafter provided, potassium leases exceeding 25,600 acres in one or more mining units, whether directly through the ownership of such permits or leases or interests therein and applications, therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such permits or leases, or interests therein and applications therefor. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten percent of the stock or other instruments of ownership or control of such association or corporation.

(b) Any person, association, or corporation holding acreage approximating 25,600 acres of Federal land, upon a showing that the leased deposits extend into adjoining or adjacent Federal lands and that the lands containing such reserves are a necessary and normal part of a mining unit may file an application with the Manager to have such adjoining or adjacent Federal land (including lands under lease, permit lands subject to lease, or unleased lands) designated a fringe-acreage that will not be chargeable under paragraph (a) of this section to leasehold acreage holdings of the applicant. Such an application must be accompanied by a filing fee of $10 which is not returnable. If the Manager shall determine, after consultation with the Mining Supervisor, that the application meets the above requirements and that such designation will result in conservation of natural resources and will provide for economical and efficient recovery as a part of the mining unit, he may designate specific tracts by legal subdivisions not to exceed 2,560 acres in all as nonchargeable to the applicant under paragraph (a) of this section. The intent of this provision is that fringe area deposits not to exceed 2,560 acres may be held without acreage charge upon acquisition of mining rights therein by the applicant. A designation of fringe-acreage under this section shall not constitute a determination that the deposits therein shall be mined only by the applicant.

§ 3141.2 Qualifications of applicant.

(a) Permits and leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorrated.

(ii) That it is authorized to hold leases for potassium deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock and of all the stock owned by aliens for those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 3141.1.

§ 3141.3 Permits and leases for lands disposed of with reservation of potassium.

Where lands included in a permit or lease have been disposed of with reservation of potassium deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54), and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

NOTE: As provided in paragraph 3 of notice of October 16, 1951, 16 F.R. 10669, potash permits and leases including renewals for "Potash Area lands" within Eddy and Lea Counties, New Mexico, shall contain special requirements for the protection of oil and gas deposits.

§ 3141.4 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for potassium permit or lease is within a withdrawal which does not preclude disposition of the potassium deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a potassium permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

Subpart 3142—Prospecting Permits

§ 3142.1 Application for permit; permit rental.

(a) An application for a permit must be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing of $10 which is not returnable, and by full payment of the first year's rental in the amount specified in paragraph (b) of this section, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision. No specific form of application is required, but the application should include the information and evidence set forth in §§ 3141.2 and 3143.1(a) (1) and (2).

(b) A permittee must pay an annual rental of 25 cents an acre or fraction thereof covered by his permit, but not less than $20 per year.

§ 3142.2 Rights conferred.

Two-year permits issued on a form approved by the Director grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of, or workability of, the potassium deposits. Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of such deposits in commerical quantities.

§ 3142.3 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond of not less than $1,000.

§ 3142.4 Extension of permits.

Potassium permits may be extended for a single period of two years if the permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit during the two-year period for which the permit was issued. This requirement may be waived, in the discretion of the Secretary, upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting. The showing should consist of copies of timely correspondence or other evidence demonstrating the unsuccessful efforts to obtain the material or labor. The application for extension must be filed in duplicate in the appropriate land office within the period beginning 90 days prior to the date of expiration of the permit. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee, and the lands will be subject to new applications for potassium permits. The application for extension must be accompanied by a filing fee of $10, which will be retained as a service charge even though the application is later withdrawn or rejected.

§ 3142.5 Relinquishment, cancellation or termination of permit.

(a) A permittee may relinquish the entire permit acreage or any portion thereof. A partial relinquishment must describe the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance, it will be effective as of the date of its filing, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(b) Except as provided in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government then the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay rental must be noted on the official records of the appropriate land office. Until such notation is made, the lands covered by the permit shall not be available for further filing of applications for potassium permit. Applications for such permits filed prior to such notation will be rejected.

(c) Where lands embraced in a canceled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3142.6 Reward for discovery.

(a) A permittee who discovers valuable potassium deposits in the land before the permit expires is entitled to a preference right lease of all or part of the lands in the permit, in a reasonably compact form as provided in § 3141.1. An application for a preference right lease must be filed in the appropriate land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as described by the prospecting work, and show that valuable potassium deposits were discovered before the permit expired. The application must be accompanied by the first year's lease rental at the rate of 25 cents per acre or fraction thereof. The lease will be on a form approved by the Director and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Director the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) When probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3141.2.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the

deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3141.2b (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3141.2(b).

Subpart 3143—Leases

§ 3143.1 Application for lease.

(a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. If the lands have not been so surveyed, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(3) Evidence that the land is valuable for its potassium content, with a statement as to the character, extent and mode of occurrence of the potassium deposits.

(b) The application must be signed by applicant, or by his attorney-in-fact supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

(d) Lands determined to be available for leasing may be offered competitively in the manner specified in § 3143.3–1 except that if the Manager, after consulting with the Mining Supervisor, determines that the potassium deposits in the lands applied for extend into an active mining unit held by the applicant, are a normal part of such mining unit, are lacking in sufficient reserves to warrant independent development as a single mining unit, and are not of competitive interest to holders of other active mining units in the area, he may, in the interest of conservation of natural resources, grant to such applicant a lease to mine and remove such adjoining deposits without competitive bidding. A noncompetitive lease granted under this subsection shall provide for a royalty on production equal to the highest rate of royalty in any Federal lease in the applicant's adjoining mining unit but not less than 5 percent of the gross value thereof at the point of shipment to market, and at the option of the applicant to be exercised at the time of filing of his application, either a cash bonus of $15.00 per acre or fraction thereof or a production payment of one cent per mine run ton in addition to the royalty specified in the lease. Acreage bonuses must be paid at the time of filing of application. Production payments will be prescribed on the lease form.

(e) Potash lands and deposits in or adjacent to Searles Lake, California, are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under Part 195 of this chapter.

§ 3143.2 Provisions of potassium leases.

§ 3143.2–1 Form of lease.

Leases shall be issued on a form approved by the Director.

§ 3143.2–2 Lease bond.

A compliance bond, in no event less than $5,000, will be required prior to the issuance of a lease. Personal bonds must be secured by negotiable Federal securities in the amount of the bond.

§ 3143.2–3 Minimum production.

Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

§ 3143.3 Competitive leases.

§ 3143.3–1 Notice of lease offer.

Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding is unlawful. See 18 U.S.C. 1860.

§ 3143.3–2 Bid deposits.

The successful bidder at a sale by public auction must on the date of sale deposit with the Manager of the Land Office, or other officer conducting the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to that prescribed in § 3141.2.

§ 3143.3–3 Award of lease.

Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3143.3–1 and file a bond as required by § 3143.2–2. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 3142.6 must be filed before it can be determined to whom the lease may be issued.

§ 3143.4 Readjustment of terms and conditions at end of twenty-year periods.

The terms and conditions of a lease are subject to reasonable readjustment at the end of each twenty-year period succeeding the date of the lease, unless otherwise provided by law at the time of

the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or that no readjustment is to be made. The effective date of readjustment shall be the end of the respective twenty-year period or the first of the month following receipt by the lessee of notice of readjustment, whichever is the later. Unless the lessee files objection to the proposed terms, or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms.

§ 3143.5 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3143.6 Cancellation of lease.

If the lessee fails to comply with the general regulations in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3143.4, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act (30 U.S.C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

Subpart 3144—Transfers

§ 3144.1 Transfers, including subleases.

(a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery made before or after the partial assignment, either on the retained or the assigned portions will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the readjustment periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3141.2 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3142.6 (c).

Subpart 3145—Royalties

§ 3145.1 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the ecenomic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or in the absence of such argeement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

PART 3150—SODIUM LEASES

Subpart 3150—Sodium Permits and Leases and Use Permits; General

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Subpart 3154—Transfers

3154.1 Transfers, including subleases.
3154.2 Overriding royalties.

Subpart 3155—Use Permits

3155.1 Use permits for additional land.

AUTHORITY: The provisions of this Part 3150 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189. Interpret or apply secs. 28–25, 41 Stat. 447, as amended; 30 U.S.C. 261–263.

Subpart 3150—Sodium Permits and Leases and Use Permits; General

§ 3150.0–3 Authority.

Sections 23 through 25 of the Act of February 25, 1920 (41 Stat. 447; 30 U.S.C. sec. 261–3) hereinafter called the Mineral Leasing Act, authorize the Secretary of the Interior to:

(a) Issue permits to prospect for deposits of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in public lands or in public lands disposed of with a reservation of such deposits to the United States;

(b) Lease such lands containing valuable deposits of such substances, and

(c) Grant to a permittee or lessee of such lands the right to use unoccupied nonmineral public land not exceeding forty acres in area camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

§ 3150.0–4 Protection of pre-existing mining claims.

Mining claims for deposits described in § 3150.0–3 which were valid on February 25, 1920, or on lands in San Bernardino County, California, on December 11, 1928, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the Mineral Leasing Act.

Subpart 3151—General Provisions

§ 3151.1 Area and limitation on holdings.

(a) Except where the rule of approximation applies, a lease or permit may not include more than 2,560 acres in reasonably compact form entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width. No person, association or corporation may hold at any one time more than 5,120 acres in any one State, except as hereinafter stated, whether directly through ownership of leases, permits and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding leases, permits and applications therefor. A larger area may be granted under the "rule of approximation" in those States covered by the public land rectangular survey system. That rule applies to applications for prospecting permits only where elimination of the smallest legal subdivision involved would result in a deficiency of area under 2,560 acres greater than the excess over 2,560 acres resulting from inclusion of each subdivision.

(b) Where necessary in order to secure the economic mining of sodium compounds, the authorized officer may, in his discretion and after consultation with the Mining Supervisor, permit a person, association, or corporation to hold up to 15,360 acres in any one State, upon submittal of but not necessarily limited to the following information and evidence as proof that the additional acreage is necessary for such purpose:

(1) Whether such person, association, or corporation holds sodium leases and permits covering fee, railroad and State lands within the same area of its public land holdings under sodium leases and permits, and if so, the description of those lands and the amount of acreage involved.

(2) The reasons why the additional public lands covering acreage in excess of 5,120 acres are actually necessary to secure an economic mining unit.

(3) A log of all wells drilled for sodium deposits on the lands which such person, association, or corporation holds under sodium lease or permit, together with an analysis of the ore discovered therein.

(c) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holding of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation.

§ 3151.2 Qualifications of applicant.

(a) Permits and leases may be issued to citizens of the United States, associations of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file in the appropriate land office statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statestatement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases or permits for sodium deposits, and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock and of all the stock owned by aliens for those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 3151.1.

§ 3151.3 Permits and leases for lands disposed of with reservation of sodium.

Where lands included in a permit or lease have been disposed of with reservation of sodium deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54) and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

§ 3151.4 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for sodium permit or lease is within a withdrawal which does not preclude disposition of the sodium deposits, the head of the Government agency having control will be called upon for a report as to whether there is any

objection to the granting of a sodium permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

Subpart 3152—Prospecting Permits

§ 3152.1 Application for permit, and issuance of permit.

(a) To obtain a sodium prospecting permit, an application must be filed in quintuplicate in the appropriate land office on a form approved by the Director or on an exact reproduction thereof. The form or an exact reproduction will constitute the permit when signed by the authorized officer of the land office. The application must be filed in accordance with the regulation in effect at the date of filing.

(b) Each application should be filled in on a typewriter or printed plainly in ink and signed in ink by the applicant or the applicant's duly authorized attorney in fact. An application may be made by a legal guardian or trustee in his name for the benefit of a nonalien minor or minors but an application may not be filed by a minor. Each application must contain a description of the land as prescribed in § 3153.1. Except where the rule of approximation applies, all applications must be for an area of not more than 2,560 acres of land in reasonably compact form as specified in § 3151.1.

(c) Each application, when filed, must be accompanied by:

(1) A filing fee of $10 which is not returnable, and full payment of the first year's rental in the amount specified in paragraph (h) of this section.

(2) If the applicant is an association or corporation, the evidence specified in § 3151.2. If the acreage holdings of a corporation or members of an association exceed 5,120 acres in the State in which the lands applied for are situated, the information and evidence specified in § 3151.1.

(3) (i) Except in a case where an officer of a corporation signs an application on behalf of the corporation, as to which see § 3151.2(b) evidence of the authority of the attorney in fact to sign the application and permit, if the application is signed by such attorney on behalf of the applicant.

(ii) If such applicant is an individual, a statement over the applicant's signature setting forth the applicant's citizenship and acreage holdings, direct and indirect, in sodium leases, permits and applications therefor in the State in which the lands applied for are situated. If such holdings exceed 5,120 acres, the same information and evidence required of a corporation or members of an association.

(4) If the application is made by a guardian or trustee, the evidence specified in § 3152.5.

(d) (1) Except as provided in subparagraph (3) of this paragraph, an application will be rejected if:

(i) The land description does not conform with the requirements of § 3153.1 (a) (2), or the land is not in reasonably compact form as specified in § 3151.1.

(ii) The total acreage exceeds 2,560 acres, except where the rule of approximation applies.

(iii) The full amount of the filing fee and the first year's rental do not accompany the application, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(iv) The application is signed by an attorney in fact on behalf of the applicant and is not accompanied by the evidence and statement required by paragraph (c) (3) of this section.

(v) The application is signed by a guardian or trustee on behalf of a minor and is not accompanied by the evidence specified in § 3152.5.

(vi) Less than five copies of the application are filed.

(vii) There is noncompliance with the requirements specified in § 3151.2.

(2) If an application is defective to the extent set out in paragraph (d) (1) of this section, the applicant will be given an opportunity to file a new application within thirty days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the thirty-day period another application is filed.

(3) An application for permit on a form not correctly reproduced, but which contains the statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the date of filing, will be approved by the authorized officer provided all other requirements are met.

(e) The United States will indicate its acceptance of the application, in whole or in part, and the issuance of the permit by the signature of the authorized officer in the space provided therefor. An executed copy of the permit will be mailed to the applicant at the address of record.

(f) If the applicant dies before the permit is issued, evidence such as specified in § 3152.5 must be filed before it can be determined to whom the permit may be issued.

(g) (1) An applicant whose application is pending on the effective date of this section, as amended, may file a new application on a form approved by the Director for the land described in his application, pursuant to paragraphs (a), (b) and (c) of this section, but without payment of the required filing fee, if it has already been paid.

(2) When required, the holder of an application pending on the effective date of this section, as amended, must within 30 days from receipt of notice, file an application on a form approved by the Director covering the same land in, and bearing the same serial number as his pending application. He must also pay the first year's rental in the amount specified in paragraph (h) of this section. No additional filing fee will be required. Failure to refile will result in the rejection of the original application without further notice.

(h) A permittee must pay an annual rental of 25 cents an acre or fraction thereof covered by his permit, but not less than $20 per year, such annual payments of rental shall be made on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper land office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. Payment of rental will also be required on all permits issued pursuant to applications filed prior to the effective date of this section, as amended.

§ 3152.2 Term of prospecting permit; rights conferred.

Prospecting permits are issued for a period of two years and grant the permittee the exclusive right to prospect and explore the lands involved to determine the existence of, or workability of, the sodium deposits therein. Only such material may be removed from the lands as is necessary to experimental work or the demonstration of the existence of such deposits in commercial quantities. The permit will be dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

§ 3152.3 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond of not less than $1,000. A bond will also be required on all permits issued pursuant to applications filed prior to the effective date of this section, as amended.

§ 3152.4 Relinquishment, cancellation, or termination of prospecting permit; availability of lands for further application upon relinquishment, cancellation, or termination of permit.

(a) A permitee may relinquish the entire permit or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must contain the description of the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(b) Except as provided for in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government then the permit may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental as specified in § 3152.1.

(2) The termination of the permit or failure to pay rental must be noted on the official records of the appropriate land office. Until such notation is made, the lands covered by the permit are not subject to any other sodium permit. Applications for such permits filed prior to such notation will be rejected.

(c) Where lands embraced in a cancelled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. If prior to such notation the permit expires at the end of its primary term in the absence of cancellation or relinquishment, the lands covered by the permit shall likewise become available for the filing of new applications even though the cancellation or relinquishment has not been noted on the records.

§ 3152.5 Reward for discovery.

(a) A permittee who discovers valuable sodium deposits in the land before the permit expires is entitled to a preference right lease of all or part of the lands in the permit, in a reasonably compact form as provided in § 3151.1 An application for a preference right lease must be filed in duplicate in the appropriate land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable sodium deposits were discovered before the permit expired. The application should be accompanied by the rental for the first year of the lease, at the rate of 25 cents per acre or fraction thereof. The lease will be on a form approved by the Director, and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Director the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivisions of such survey.

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3151.2.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3151.2, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3151.2.

§ 3152.6 Expiration of permit.

Unless a lease application is filed pursuant to § 3152.1 the permit will expire at the end of its period without notice to permittee. No extension of the term will be granted.

Subpart 3153—Sodium Leases

§ 3153.1 Application for lease by competitive bidding.

(a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the land by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either as official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the United States Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(3) Evidence that the land is valuable for its sodium content, with a statement as to the character, extent and mode of occurrence of the sodium deposits.

(b) The application must be signed by applicant, or by his attorney in fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 3153.2 Lease requirements.

§ 3153.2–1 Form of lease.

Leases shall be issued on a form approved by the Director.

§ 3153.2–2 Lease bond.

A compliance bond, in no event less than $5,000 will be required prior to the issuance of a lease.

§ 3153.3 Competitive leasing.

§ 3153.3–1 Minimum production.

Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

§ 3153.3–2 Notice of lease offer.

Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale; whether the sale will be at public auction or by sealed bids; the description of the lands; and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the

sale, including the manner in which bids may be submitted, and a statement (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The Commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U.S.C. 1860.

§ 3153.3–3 Bid deposits.

The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to that prescribed in § 3151.2.

§ 3153.3–4 Award of lease.

Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3153.3–2, and file a bond as required by § 3153.2–2. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 3152.5 must be filed before it can be determined to whom the lease may be issued.

§ 3153.4 Renewal leases.

An application for a renewal lease must be filed in duplicate in the appropriate land office not less than 30 days nor more than 90 days before the lease term expires and be accompanied by a filing fee of $10 which is not returnable. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of the lease, the lessee will be required to submit a satisfactory bond as prescribed in § 3153.2–2.

§ 3153.5 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3153.6 Cancellation of lease.

If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Act (30 U.S.C. 188). A waiver of any particular cause for forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

Subpart 3154—Transfers

§ 3154.1 Transfers, including subleases.

(a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery either on the retained or the assigned portion will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the appropriate land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease as required by § 3151.2 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease or permit or interest therein must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3152.5 (c).

§ 3154.2 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interests at any time exceeds one percent of the gross value of the output at the point of shipment to market, they shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

Subpart 3155—Use Permits

§ 3155.1 Use permits for additional land.

(a) A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of not exceeding 40 acres of unoccupied nonmineral public land not included within the boundaries of a natural forest for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of

the deposits covered by the permit or lease. The annual rental charge for use of such land will be not less than $1 an acre or fraction thereof. Payment of the rental shall be made at the time specified in § 3152.1, and will also be required on all use permits issued pursuant to applications filed prior to the effective date of this section, as amended.

(b) Applications for permits to use additional land shall be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing fee of $10 which is not returnable and the first year's rental in the amount specified in paragraph (a) of this section. The applications must contain a description of the land as specified in § 3153.1, and set forth the reasons why the additional land is necessary to the permittee or lessee for the use named, and whether it is unoccupied and nonmineral. A use permit will be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

(c) Any use permit shall terminate automatically if the permittee or lessee fails to pay the rental at the time specified in § 3152.1.

PART 3160—PHOSPHATE LEASES; PROSPECTING PERMITS AND USE PERMITS

Subpart 3160—Phosphate Leases, Prospecting Permits, and Use Permits; General

Sec.
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Subpart 3166—Use Permits for Additional Lands

3166.1 Right to use surface.
3166.2 Applications for permits.

AUTHORITY: The provisions of this Part 3160 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3160—Phosphate Leases, Prospecting Permits, and Use Permits; General

§ 3160.0–3 Statutory authority.

Sections 9 to 12, inclusive of the Act of February 25, 1920 (41 Stat. 440; 441, 30 U.S.C. 211–214), as amended, hereinafter referred to as the act, authorizes the Secretary of the Interior to:

(a) Issue permits to prospect for phosphate deposits, including associated minerals, in public lands or in public lands disposed of with a reservation of such deposits to the United States;

(b) Lease such lands known to contain such deposits, and

(c) Grant to a permittee or lessee of such lands the right to use unappropriated and unentered public land not exceeding 80 acres for proper extraction, treatment or removal of the deposits covered by the permit or lease.

§ 3160.0–4 Responsibility; protection of pre-existing mining claims.

Mining claims for deposits described in § 3160.0–3 which were valid on February 25, 1920, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the act.

Subpart 3161—General Provisions

§ 3161.1 Area; limitation on holdings; term.

(a) A permit or lease may not exceed 2,560 acres. The lands will be in reasonably compact form and entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width.

(1) No person, association, or corporation, may hold at any one time more than 10,240 acres in the United States, whether directly through the ownership of phosphate leases, permits and applications therefor or interests in them, or indirectly through association membership or stock ownership. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or

association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holding of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation.

(2) All leases will be issued on a form approved by the Director for a primary term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease. All prospecting permits will be issued on a form approved by the Director for a primary term of two years and may be extended for such an additional period, not in excess of four years, as the Bureau of Land Management deems advisable, if it is found that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits in the permit lands and desires to prosecute further prospecting, or for other reasons warranting such an extension in the opinion of the Bureau of Land Management.

(b) A lessee, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to be filed in the Land Office, be granted, subject to the acreage limitation under paragraph (a)(1) of this section, a lease for additional acreage, if the authorized officer of the Bureau of Land Management, after consultation with the Mining Supervisor of the Geological Survey shall determine that the increased acreage will result in conservation of natural resources and will provide for the most economical and efficient recovery of a minable deposit without waste. In applying this paragraph, fringe acreage in an area not of interest to more than one operator, and lacking sufficient reserves of phosphate deposits to warrant independent development, may be leased noncompetitively without publication either by separate lease or by adding to an existing leasehold (within the aggregate limitation of 2,560 acres), subject to a bonus of not less than $1 an acre, a minimum royalty, and such other terms and conditions as may be determined at the time the lease offer is made. If, however, the fringe acreage has sufficient reserves to warrant independent development, or, if, following appropriate inquiry of operators in the area and consultation with the Mining Supervisor, the authorized officer of the Bureau of Land Management determines that there is competitive interest therein, the lands will be offered competitively under § 3162.6.

§ 3161.2 Qualifications of applicant.

(a) Permits and leases may be issued to citizens of the United States, associations of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file in the proper land office specified in § 3162.1 the following:

(1) If an individual, a statement as to citizenship indicating whether native born or naturalized.

(2) If an association (including a partnership), a certified copy of the articles of association and the same showing as to citizenship and acreage holdings of its members as required of an individual.

(3) If a corporation, a statement showing:

(i) The State in which it is incorporated;

(ii) That it is authorized to hold permits and leases of the mineral for which the permit or lease is sought and the person executing an instrument on behalf of the corporation is authorized to act in such matters;

(iii) The percentage of voting stock, of all the stock owned by aliens, and of all the stock owned by those outside of the United States. If more than 10 percent of the stock is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each;

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class of the corporation;

(4) A statement that holdings do not exceed the acreage limitation specified in § 3161.1

(d) Where the information required under paragraph (c) of this section has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

§ 3161.3 Prospecting permits.

§ 3161.3–1 Application for prospecting permit.

(a) The act of March 18, 1960 (Pub. Law 86–391, 74 Stat. 7), authorizes, among other things, the issuance of phosphate prospecting permits. All applications for such a permit shall be filed in duplicate in the office specified in § 3162.1. A filing fee of $10, which is not returnable, and full payment of the first year's rental in the amount specified in § 3161.3–3, must accompany the application. No specific form is required but the application should:

(1) Contain the applicant's name and address and his qualifications as to citizenship and acreage holdings as set forth in § 3161.2(b).

(2) Contain a description of the lands for which permit is desired as specified in § 3162.1.

(b) All applications must be signed by the applicant or his attorney in fact, and if executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney in fact to make such statement or to execute all statements which may be required under these regulations. Where such power of attorney is filed reference thereto may be made upon the filing of subsequent applications. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(c) All applications filed on or after March 18, 1960, the date of enactment of Pub. Law 86–391 (74 Stat. 7), including applications filed on and after the effective date of these amendatory regulations, will be considered with respect to priority in accordance with the time of filing such applications in the appropriate land office.

(d) All appliciations filed in the manner specified in § 2311.2–3 of this chapter, will be deemed simultaneously filed.

§ 3161.3–2 Rights conferred.

Two-year permits grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of or workability of the phosphate deposits. Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of valuable phosphate deposits.

§ 3161.3–3 Permit rental.

A permittee shall pay an annual rental of 25 cents an acre or fraction thereof covered by his permit, but not less than $20 per year, such annual payment of rental shall be made on or before the anniversary date of the permit. The payment of such rental will be required as to permits issued upon applications filed prior to the effective date of these amendatory regulations.

§ 3161.3–4 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond of not less than $1,000.

§ 3161.3–5 Extension of permit.

Phosphate permits may be extended by an authorized officer of the Bureau of Land Management for an additional period, not in excess of four years, as he deems advisable, if he finds, after consultation with the Mining Supervisor of the Geological Survey, that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension. An application for extension shall be filed in duplicate in the proper land office within the period beginning 90 days prior to the date of expiration of the permit. The application must be accompanied by a $10 filing fee which is not returnable, and must show what efforts, if any, the permittee has made to comply with the terms of his permit and the reasons for failure to comply therewith. The application must also show how much additional time is considered necessary to complete prospecting work. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee.

§ 3161.3–6 Relinquishment, cancellation or termination of permit.

(a) A permittee may relinquish the entire permit acreage or any portion

thereof. A partial relinquishment must describe the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the proper land office. Upon its acceptance it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(b) Except as provided for in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate authmatically if the permittee fails to pay the rental at the time specified in §3161.3–3. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of further applications for phosphate prospecting permits. Applications for such permits filed prior to such notation will be rejected.

(c) Where lands embraced in a cancelled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3161.3–7 Reward for discovery under permit.

(a) A permittee who, prior to the expiration of his permit, shows to the Secretary that valuable phosphate deposits have been discovered upon the land covered by the permit is entitled to a preference right lease for all or part of the land, in a reasonably compact form. An application for preference right lease shall be filed in duplicate in the proper land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable phosphate deposits were discovered before the permit expired. The application must be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof. The lease will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) The survey of unsurveyed lands embraced in the permit will be made at the expense of the Government prior to the issuance of a lease of the lands.

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by §3161.2 (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3161.2 (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3161.2 (1) and (4).

Subpart 3162—Competitive Leases

§ 3162.1 Application for lease by competitive bidding.

(a) Applications shall be filed, in duplicate, in the appropriate land office. A filing fee of $10, which is not returnable, must accompany the application. No specific form is required, but the application should include the following.

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the United States Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(3) To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(4) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

(b) The application must be signed by applicant or by his attorney-in-fact supported by the power of attorney.

§ 3162.2 Lease bond.

A compliance bond, in no event less than $5,000, will be required prior to the issuance of a lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate or personal bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 3162.3 Minimum production.

Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

§ 3162.4 Lessee's petition for change in minimum production.

The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and processing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within six months after receipt of this information the authorized officer, after considering what would be a reasonable period within which to mine the leased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

§ 3162.5 Offer of lands or deposits for lease by competitive bidding.

If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding either at public auction or by sealed bids as provided in the notice of lease offer.

§ 3162.6 Notice of lease offer.

Notice of the offer of lands for lease will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will show the time and place of sale; whether the sale will be at public auction or by sealed bids; the description of the lands; and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the high bidder to pay for publication of that notice may be obtained. It will also contain a statement that sealed bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening of the bids. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted and statements (a) that the high bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; (b) that the terms of minimum production will not be reduced or waived at the lessee's request except as provided in §§ 3162.3, 3162.4, 3102.3 and 3102.4, or upon satisfactory showing that market conditions are such that the lessee cannot operate except at a loss; (c) that the lease will be canceled if production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease; and (d) that the Government reserves the right to reject any and all bids. The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

§ 3162.7 Bidding requirements; deposits.

(a) At a sale by oral auction the high bidder must deposit with the officer conducting the sale, on the day of the sale, and each bidder at a sale by sealed bids must include with his bid, one-fifth of the amount of his bid.

(b) At the close of an oral auction, or the opening of sealed bids, the officer conducting the sale, subject to the right to reject any and all bids, will award the lease to the high bidder, who will be notified accordingly.

(c) All deposits must be made in cash or by certified check, cashier's check, bank draft, or money order, and the bid shall be accompanied by a statement over the bidder's own signature with respect to citizenship and holdings as prescribed in § 3161.2 (1), (2), (3) and (4). Deposits made on rejected or unsuccessful bids will be returned to the bidders.

§ 3162.8 Action after lease offer.

If the land is surveyed, four copies of the lease will be sent to the high bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental and the cost of publication of the notice of lease offer as specified in § 3162.6, and file a bond as required by § 3162.2 The lease will be dated the first day of the month following its issuance unless the high bidder requests that it be dated the first day of the month of issuance. If the land is unsurveyed, the high bidder will not be required to comply with the requirements of this paragraph until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the high bidder fails to comply with the requirements necessary to complete the lease or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the act. If the lease is executed by an attorney acting in behalf of the bidder, it must be accompanied by the power of attorney. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence such as specified in § 3161.3–7, in order that the authorized officer of the land office may determine to whom the lease may be issued.

Subpart 3163—Payments and Reports

§ 3163.1 Rentals and royalties.

(a) Rentals under all leases or permits shall be paid to the authorized officer of the proper land office, except that rentals and royalties on productive leases shall be paid to the appropriate Mining Supervisor of the Geological Survey. All remittances to the authorized officer of the land office shall be made payable to the Bureau of Land Management, those to the Mining Supervisor shall be made payable to the United States Geological Survey.

(b) All reports concerning operations shall be filed with the Mining Supervisor.

§ 3163.2 Use of silica, limestone or other rock.

Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the authorized officer, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

§ 3163.3 Readjustment of terms and conditions at end of twenty-year periods.

The terms and conditions of a lease may be readjusted at the end of each twenty-year period succeeding the date of the lease. Prior to the expiration of that period, the lessee will be advised

of the reasonable readjustment of terms proposed or notified that no readjustment is to be made for the next period. The lessee may file his consent to such proposed readjustment or inform the authorized officer as to the terms which are unsatisfactory. After considering the suggestions of the lessee, the authorized officer shall make his determination as to the reasonable readjustment of terms to be effective for the twenty-year period under consideration.

Subpart 3164—Assignments

§ 3164.1 Assignments of leases and permits or interests therein.

(a) Leases and permits may be assigned or subleased as to all or part of the lands involved to any person or corporation qualified to hold phosphate leases and permits. The approval of an assignment or transfer of only part of the lands described in a permit or lease will create a separate permit or lease of the lands assigned or transferred which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such an assignment will not extend the life of the permit or the readjustment periods of the lease. Assignments of permits and leases, whether by direct assignment, operating agreements, working or royalty interests, subleases, or otherwise must be filed for approval at the proper land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3161.2 and §3162.1 (a) (4) and (b), must be submitted simultaneously. Assignments of record title interests must be filed in duplicate. A single executed copy of all other instruments of transfer is sufficient. An assignment will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of approval.

(b) An application for approval or any instrument transferring a lease, permit, or interest therein, must be accompanied by a $10 filing fee. An application not accompanied by such fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) Where an assignment does not create separate leases or permits, the assignee must submit a new bond, or the consent of the surety on the bond of record to the substitution of the assignee as principal. If the assignment is for part of the land covered by a lease or permit, the assigned portion must be definitely described and the exact area given, and there must be submitted: (1) The consent of the surety to the assignment and its agreement to remain bound as to the interest retained by the lessee or permittee, and (2) a new bond with the assignee as principal covering the portion of the land assigned.

(d) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease or permit until the effective date of the assignment or sublease. If the assignment or sublease is not approved, their obligations to the United States shall continue as though no such assignment or sublease had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease or permit obligations notwithstanding any term in the assignment or sublease to the contrary.

(e) In order for the heirs or devisees of a deceased holder of a lease or permit, an operating agreement, or a royalty interest in a lease or permit, to be recognized by the Bureau of Land Management as the holder of the lease or permit, agreement or interest, there must be furnished the appropriate showing required under § 3161.3–7.

(f) No assignment will be approved if the assignee fails to file the evidence required by this section and the account under the lease or permit is not in good standing. A minor, except a minor heir or devisee of a lessee or permittee, is not qualified to hold a lease or permit and an assignment to a minor will not be approved.

§ 3164.2 Limitation on overriding royalties.

An overriding royalty interest shall not be created by assignment or otherwise exceeding one percent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

Subpart 3165—Termination

§ 3165.1 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvement on the leased lands in accordance with the regulations and terms of the lease.

§ 3165.2 Cancellation of lease.

If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3163.3 or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Subpart 3166—Use Permits for Additional Lands

§ 3166.1 Right to use surface.

A lessee or permittee may be granted a right to use the surface of not exceeding 80 acres of unappropriated and unentered public land not included within the boundaries of a national forest as may be necessary for the proper extraction, treatment, or removal of the leased deposits. The annual charge for the use of such land will be not less than $1 per acre or fraction thereof.

§ 3166.2 Applications for permits.

Applications for permits for such additional land shall be filed in the office specified in § 3162.1(a). A filing fee of $10, which is not returnable, must accompany each application. Such applications must set forth the specific reasons why the additional land is necessary to the permittee or lessee for the use named, describe the land desired in accordance with § 3162.1(a)(2), and also set forth the reasons why the land is desirable and adapted to the use named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the permittee or lessee requests that it be dated the first day of the month of issuance.

create separate leases or permits, the as- operating agreement is assigned, the

PART 3170—OIL SHALE

Subpart 3170—Oil Shale; General

Sec.
3170.0–1 Purpose.
3170.0–3 Statutory authority.

Subpart 3171—Application for Lease

3171.1 Qualification of applicants.
3171.2 Lands and deposits to which applicable.
3171.3 Form and contents of application.
3171.4 Disposition of application.
3171.5 Action on application.
3171.6 Form of lease.
3171.7 Preferred right to a lease.

AUTHORITY: The provisions of this Part 3170 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3170—Oil Shale; General

§ 3170.0–1 Purpose.

(a) Circ. 1220, June 9, 1930 (53 I.D. 127), contains the following instructions relative to oil shale withdrawal of Apr. 15, 1930, No. 5327:

By E.O. 5327, Apr. 15, 1930, made under authority and pursuant to the provisions of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 142), and subject to valid existing rights, the deposits of oil shale and lands containing such deposits owned by the United States were temporarily withdrawn from lease or other disposal and reserved for the purposes of investigation, eximination and classification.

In order to identify for administrative purposes the known areas affected by the order, the Secretary has approved maps prepared by the Geological Survey designating the lands containing oil shale of recognized commercial importance, in Colorado, Wyoming, and Utah. Copy of the map showing the designations is transmitted herewith to the register of each district in which designations have been made.

The oil shale deposits and the lands so designated, title to which is in the United States, are by the order withdrawn from lease, entry, selection or other form of disposal, and you will therefore reject all applications for such lands, except applications for patent under the mining laws for metalliferous mining claims, or applications under other public land laws which are based on claims to the lands initiated prior to the date of the withdrawal.

Lands not designated on the map as oil shale, but which are in fact valuable for their oil shale deposits are also withdrawn by said order. Affirmative proof of the non-oil shale character of lands not designated on the maps as oil shale, other than the regular non-mineral affidavit, will not be required.

However, if your records show any land not designated on the map to be in fact oil shale in character, you will reject any application therefor. Any entry, filing, or selection allowed for lands which are thereafter, and prior to patent, found to valuable for oil shale, will be subject to cancellation by appropriate proceedings.

(b) Circ. 1355, June 4, 1935 (55 I.D. 280), contains the following instructions relative to modification of oil shale withdrawal of Apr. 15, 1930, by E.O. 7038, May 13, 1935:

By E.O. 7038, May 13, 1935, E.O. 5327, Apr. 15, 1930, withdrawing certain lands for purposes of investigation, examination, and classification was modified to extent of authorizing the Secretary of the Interior to issue sodium permits and leases under the general leasing act of February 25, 1920 (41 Stat. 437), as amended by the act of December 11, 1928 (45 Stat. 1019; 30 U.S.C. 261, 262), for and of any of the lands withdrawn by said order.

Circ. 1220, June 9, 1930 (53 L.D. 127), is accordingly modified to conform to the later Executive order and you are authorized to accept applications for sodium prospecting permits and leases for lands withdrawn under E.O. 5827, Apr. 15, 1930.

(c) E.O. 5327, Apr. 15, 1930, was modified by E.O. 6016, Feb. 6, 1933, so as to authorize oil and gas leases for the withdrawn lands.

§ 3170.0–3 Statutory authority.

Section 21 of the act of Congress approved February 25, 1920 (41 Stat. 445; 30 U.S.C. 241), authorizes the Secretary of the Interior to lease any deposits of oil shale belonging to the United States, and the surface of such lands as may be necessary for the extraction and reduction of the minerals leased.

Subpart 3171—Application for Lease

§ 3171.1 Qualifications of applicants.

Pursuant to section 1 of the act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) leases may be made to (a) a citizen of the United States; (b) an association of such citizens; (c) a corporation organized under the laws of the United States, or of any State thereof; or (d) a municipality.

§ 3171.2 Lands and deposits to which applicable.

The lease may include oil shale deposits and the surface of so much of the land containing same, or of land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, the aggregate area not to exceed 5,120 acres.

§ 3171.3 Form and contents of application.

(a) Applications shall be filed in the appropriate land office. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(1) Applicant's name and address.

(2) Qualifications of petitioner to take a lease under the act including: Statement of his interests, direct or indirect, in other oil shale leases or applications therefor on public lands in the State in which the lease is desired, identifying the same by land office and serial number, and proof of citizenship—in the case of an individual, by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized and number of certificate if known; if a woman, whether she is married or single, and, if married, the date of her marriage and citizenship of her husband. Corporations are required to file a certified copy of their articles of incorporation, a showing as to residence and citizenship of the stockholders, and if any stock is held by aliens, a showing, to the extent reasonably ascertainable, of the name, country to which each such alien owes allegiance, and amount of stock held by each. Municipalities must submit evidence of the law or charter and procedure taken by which it became and exists as a body corporate, that the taking of a lease is authorized under such law or charter, and that the action proposed has been duly authorized by the governing body of such municipality.

(3) A statement that the applicant has no lease under the provisions of this section, nor any other application for lease thereunder pending, and that he does not hold interests in such leases or applications which, with the land applied for, will exceed 5,120 acres.

(4) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the State Director the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(5) Evidence that the land is valuable for its oil-shale content, except so much thereof as is necessary for the extraction and reduction of the leased materials, with a statement as accurate as may be of the character and extent and mode of occurrence of the oil-shale deposits in the lands applied for.

(6) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(7) The application shall be accompained by a notice for publication, in duplicate, prepared for the signature of the manager, in substantially the following form:

Serial No. --------

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
LAND OFFICE AT ----------,
---------- 19----

NOTICE OF APPLICATION FOR OIL-SHALE LEASE

Notice is hereby given that in pursuance of the Act of Congress, approved February 25, 1920, ------ ------ whose post-office address is ------ has made application for oil-shale lease covering the following described lands: -------

Any and all persons claiming adversely any of the above-described lands are required to file their claims in this office on or before ------, otherwise their claims will be disregarded in the granting of such lease.

----------, Manager.

(b) The application must be signed by the applicant or his attorney in fact, and if executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

(c) The manager will fix the time within which adverse or conflicting claims may be filed at not less than 30, nor more than 40 days from first publication.

§ 3171.4 Disposition of application.

One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the manager, of general circulation, and best adapted to give the widest publicity, in the county where the land is situated. If the land is in two or more counties, notice must be published in each. Notice must also be posted in the land office during the period of publication.

§ 3171.5 Action on application.

As the area and form of lands leased hereunder is entirely discretionary with the authorized officer, if the area applied for is considered too large, or the form unsatisfactory, or in case of conflicting applications, the application may be held for rejection, but the applicant given an opportunity to amend his application in conformity with requirements. If the right to a lease be granted, the applicant will be required, within 30 days from notice, to pay the rental of 50 cents per acre for the first year.

§ 3171.6 Form of lease.

The form of lease will be substantially the same as that set forth in 47 L.D. 426–429.

§ 3171.7 Preferred right to a lease.

(a) Under a proviso of section 21 of the act (41 Stat. 445; 30 U.S.C. 241), a person having a valid claim to oil shale deposits under existing law, prior to January 1, 1919, shall, upon the relinquishment of such claim or claims, be entitled to a lease for not exceeding 5,120 acres: *Provided*, "That no claimant for a lease who has been guilty of any fraud, or who had knowledge or reasonable ground to know of any fraud, or who has not acted honestly and in good faith, shall be entitled" to such lease.

(b) The beneficiaries of this proviso are those persons or their grantors who, in the honest belief that the mining laws were applicable to oil shale deposits, have proceeded in absolute good faith to make mineral locations, lode or placer, of shale deposits, and who have, in all respects, fully complied with the provisions and requirements of such laws, including discovery.

(c) The same form of procedure in making applications for lease should be followed as in other cases, except that, in addition to the points referred to in § 3171.3 of any ordinary application, an application for a preference-right lease should be accompanied by a full and detailed showing, duly corroborated, of the facts on which the applicant claims a preferred right, together with copies of the location notices, abstracts of title and such other evidence as may be deemed necessary to establish the claimant's preferred right and entire absence of fraud. Claimants of such preferred rights to leases should present same promptly; otherwise the lands may be leased to others, in which case any preference rights under this proviso will be deemed to have lapsed.

PART 3180—SULPHUR PERMITS AND LEASES

Subpart 3180—Sulphur Permits and Leases; General

Sec.
3180.0–3 Statutory authority.

Subpart 3181—General

3181.1 Area and limitations on holdings.
3181.2 Qualifications of applicant.
3181.3 Permits and leases for lands disposed of with reservation of sulphur.
3181.4 Requirements when lands are within a withdrawal.
3181.5 Protection of pre-existing mining claims.

Subpart 3182—Sulphur Prospecting Permits

3182.1 Application for permit.
3182.2 Rights conferred.
3182.3 Permit bond.
3182.4 Cancelled permits.
3182.5 Reward for discovery.
3182.6 Expiration of permit.

Subpart 3183—Sulphur Leases

3183.1 Lease and lease bond.
3183.1–1 Form of leases.
3183.1–2 Lease bond.
3183.2 Rental and royalty.
3183.2–1 Royalty.
3183.2–2 Rental.
3183.2–3 Minimum production.
3183.3 Competitive leasing.
3183.3–1 Application for lease by competitive bidding.
3183.3–2 Notice of lease offer.
3183.3–3 Bid deposits.
3183.3–4 Award of lease.
3183.4 Renewal leases.
3183.5 Termination.
3183.5–1 Relinquishment of lease.
3183.5–2 Cancellation of lease.

Subpart 3184—Transfers of Permits and Leases

3184.1 Transfers, including subleases.

Subpart 3185—Royalties

3185.1 Overriding royalties.

AUTHORITY: The provisions of this Part 3180 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189. Interpret or apply secs. 1–6, 44 Stat. 301–302, as amended; 30 U.S.C. 271–276.

Subpart 3180—Sulphur Permits and Leases; General

§ 3180.0–3 Statutory authority.

Sections 1 to 7 of the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276), authorize the Secretary of the Interior to:

(a) Issue permits to prospect for sulphur in public lands or in public lands disposed of with a reservation of such deposits to the United States located in the States of Louisiana and New Mexico.

(b) Lease such lands containing valuable deposits of sulphur.

Subpart 3181—General

§ 3181.1 Area and limitations on holdings.

A lease or permit may not include more than 640 acres except where the rule of approximation applies. The lands in the lease or permit will be in reasonably compact form and entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width. No person, association or corporation may hold more than three sulphur permits or leases in any one State during the life of such permits or leases.

§ 3181.2 Qualifications of applicants.

(a) Permits and leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendment, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold permits and leases for sulphur deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock, of all the stock owned by aliens and of

all the stock owned by those having ad-

all the stock owned by those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings of sulphur permits or leases do not exceed the number specified in § 3181.1.

§ 3181.3 Permits and leases for lands disposed of with reservation of sulphur.

Where lands included in a permit or lease have been disposed of with reservation of sulphur deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54) and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

§ 3181.4 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for sulphur permit or lease is within a withdrawal which does not preclude disposition of the sulphur deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a sulphur permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

§ 3181.5 Protection of pre-existing mining claims.

Mining claims for sulphur deposits on lands such as specified in § 3180.0–3 situated in Louisiana which were valid on April 17, 1926, or on such lands in New Mexico, on July 16, 1932, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

Subpart 3182—Sulphur Prospecting Permits

§ 3182.1 Application for permit.

An application for a permit must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form of application is required, but the application should include the information and evidence called for in §§ 3181.2 and 3183.3–1.

§ 3182.2 Rights conferred.

Two-year permits issued and on a form approved by the Director grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of, or workability of, the sulphur deposits, Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of such deposits in commercial quantities.

§ 3182.3 Permit bond.

Prior to the issuance of a permit for lands entered or patented with a reservation of the sulphur deposits to the United States, or lands within a reclamation project, the applicant must furnish an approved surety bond of at least $1,000. The right is reserved to require the applicant, in any case where deemed necessary, to furnish a permit bond.

§ 3182.4 Cancelled permits.

Upon cancellation of a sulphur permit for any reason, the land will not be open to sulphur permit applications until the cancellation is noted on the records of the land office.

§ 3182.5 Reward for discovery.

(a) Upon a satisfactory showing that valuable deposits of sulphur have been discovered by a permittee within the area covered by this permit before the permit expires, and that the land is chiefly valuable therefor, the permittee shall be entitled to a preference right lease for all or part of the land embraced in his permit in a reasonably compact form. An application for a preference right lease by a sulphur permittee must be filed not later than 30 days after his permit expires. The application must be filed in the appropriate land office and describe the land desired, show the date valuable sulphur deposits were discovered, specify fully the extent and mode of occurrence of the deposits as disclosed by prospecting work, and show any change in the information contained in the application for sulphur permit. The application must be accompanied by the first year's lease rental at the rate of 50 cents per acre or fraction thereof. The lease will be on a form approved by the Director, and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right sulphur lease, unless otherwise specified therein. If the sulphur permit expires and the application for sulphur lease is finally rejected, royalty for the sulphur mined will be charged at the sulphur permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the sulphur permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Director the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the sulphur lease will be conformed to the subdivision of such survey.

(c) If the sulphur permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee or lessee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3181.2(b) (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee or lessee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required § 3181.2 (b) (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3181.2.

§ 3182.6 Expiration of permit.

Unless a lease application is filed pursuant to § 3182.5 the permit will expire at the end of its period without notice to the permittee. No extension of the term will be granted.

Subpart 3183—Sulphur Leases

§ 3183.1 Leases and lease bond.

§ 3183.1–1 Form of lease.

Leases shall be issued on a form approved by the Director.

§ 3183.1–2 Lease bond.

A compliance bond, in no event less than $5,000.00, will be required prior to the issuance of a lease.

§ 3183.2 Rental and royalty.

§ 3183.2–1 Royalty.

Leases based upon discovery of valuable sulphur deposits under a sulphur permit shall provide for a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market. Leases for lands known to contain valuable deposits of

sulphur and not covered by sulphur permits or leases shall provide for such royalty as will be determined prior to the issuance of the lease, but in no case shall the royalty be less than 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

§ 3183.2–2 Rental.

Leases shall provide for the payment, in advance, of an annual rental of 50 cents for each acre or part thereof covered by the lease, beginning with date of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

§ 3183.2–3 Minimum production.

Leases will require the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, unless operations are interrupted by strikes, the elements or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 209). See showing required under § 3102.4.

§ 3183.3 Competitive leasing.

§ 3183.3–1 Application for lease by competitive bidding.

(a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(3) Evidence that the land is valuable for its sulfur content, with a statement as to the character, extent, and mode of occurrence of the sulfur deposits.

(b) The application must be signed by applicant, or by his attorney in fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 3183.3–2 Notice of lease offer.

Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county or parish in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the lands and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The right is reserved to reject any and all bids, and should a bid be rejected, the deposit made by the bidder will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder, or prevent bidding, is unlawful.

§ 3183.3–3 Bid deposits.

The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids, must submit with his bid, certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount of the bid, and evidence of qualifications as required by § 3181.2.

§ 3183.3–4 Award of lease.

Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four lease forms will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3183.3–2, and file a bond as required by § 3183.1. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence such as specified in § 3182.5(c), in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

§ 3183.4 Renewal leases.

An application for a renewal lease must be filed in the appropriate land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a new bond as prescribed in § 3182.3. Each application for renewal must be accompanied by a filing fee of $10, which will not be returnable.

§ 3183.5 Termination.

§ 3183.5–1 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3183.5–2 Cancellation of lease.

If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act (30 U.S.C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

Subpart 3184—Transfers of Permits and Leases

§ 3184.1 Transfers, including subleases.

(a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery made before or after the partial assignment, either on the retained or the assigned portions will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the renewal periods of

the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the appropriate land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3181.2 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) A application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Department as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3182.5.

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

Subpart 3185—Royalties

§ 3185.1 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interests at any time exceeds one percent of the gross value of the output at the point of shipment to market, they shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

PART 3190—ASPHALT LEASES

Subpart 3190—Asphalt Leases; General

Sec.
3190.0–3 Authority.

Subpart 3191—Leasing Procedure

3191.1 Application for Lease.
3191.2 Rentals, royalties, and minimum royalties.
3191.3 Term of lease.
3191.4 Multiple use of lands.
3191.5 Form of lease.
3191.6 Lease bond.

AUTHORITY: The provisions of this Part 3190 issued under 74 Stat. 781, secs. 181, 182, 241, 30 U.S.C.

Subpart 3190—Native Asphalt Solid and Semisolid Bitumen and Bituminous Rock Leases; General

§ 3190.0–3 Authority.

The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., sec. 181), as amended by the act of September 2, 1960 (74 Stat. 781; 30 U.S.C. secs. 181, 241) provides for the leasing of native asphalt, solid and semisolid bitumen and bituminous rock (including oil impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried).

Subpart 3191—Leasing Procedure

§ 3191 Leasing procedure.

§ 3191.1 Application for lease.

(a) An applicant must give his name and address and citizenship qualifications in the manner prescribed in § 3101.1.

(b) Lands included in an application for a lease must be described in the same manner as specified in § 3123.8. No more than 7,680 acres may be acquired or held under lease by any person, association or corporation in any one State irrespective of the number of leases.

(c) Each application must be filed in the proper land office and must be accompanied by a filing fee of $10 which will not be returnable.

(d) All leases will be issued through competitive bidding only in the same manner as that provided for in §§ 3123.2 through 3124.3.

§ 3191.2 Rentals, royalties and minimum royalties.

The minimum royalty and royalty rates will be fixed and determined prior to the offering of the lands for lease and the issuance of the lease to the successful bidder. Such rates will be set out in the notice of publication inviting bids and will be determined on an individual case basis. The annual rental will be 50 cents per acre or fraction thereof payable annually in advance.

§ 3191.3 Term of lease.

All leases shall be for a term of 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

§ 3191.4 Multiple use of lands.

In accordance with, and in furtherance of the principle of the multiple use of the public lands, a lease for the mineral deposits enumerated in this Part may be issued, notwithstanding the existence of any lease covering the same lands issued under any other provision of the act.

§ 3191.5 Form of lease.

The form of lease will be substantially the same as that set forth in 47 L.D. 426–429. The right is reserved to insert in the lease such other terms and conditions as may be deemed necessary for the protection of the surface of the land, its resources and any other lessees of the lands.

§ 3191.6 Lease bond.

Prior to the issuance of the lease and as a condition therefor, the successful bidder must furnish a corporate surety bond in an amount to be set forth in the invitation to bid. The right is reserved to require an increase of the amount of the bond before or after the issuance of the lease when deemed proper by the authorized officer.

Group 3200—Mineral Leasing on Acquired Lands

PART 3210—ACQUIRED LANDS LEASING ACT

Subpart 3210—Acquired Lands Leasing Act; General

Sec.
3210.0–3 Authority.
3210.0–6 Sale of conveyance of lands.

Subpart 3211—Land Open Under Act

3211.1 Lands and deposits to which the act does not apply.
3211.2 Stipulations and consent of agency having jurisdiction of land.
3211.3 Other regulations applicable; lease forms, applications, and offers.

Subpart 3212—Lease Requirements

3212.1 Supplemental information required in offers and applications for leases and permits; place of filing.
3212.2 Restriction on holdings.
3212.3 Leases of future or fractional interests.
3212.4 Offer to lease and issuance of lease.
3212.5 Exchange of leases.

AUTHORITY: The provisions of this Part 3210 issued under sec. 10, 61 Stat. 915; 30 U.S.C. 359.

Subpart 3210—Mineral Leasing on Acquired Lands; General

§ 3210.0–3 Authority.

(a) The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359) and referred to in this part as "the act," authorizes the Secretary of the Interior to issue permits and leases for deposits of oil, gas, oil shale, coal, phosphate, sodium and potassium in lands acquired by the United States subject to the same conditions as contained in the mineral leasing laws of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C. 181–263), February 7, 1927 (44 Stat. 1057), as amended (30 U.S.C. 281–287), and in all laws which amend or supplement these mineral leasing laws. The act also authorizes the issuance of permits and leases for sulphur deposits in such acquired lands, wherever situated, subject to all other conditions contained in the act of April 17, 1926 (44 Stat. 301), as amended (30 U.S.C. 271–276).

(b) The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV), as to the above-enumerated minerals, except as to leases or permits outstanding on August 7, 1947.

§ 3210.0–6 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

Subpart 3211—Lands Open Under Act

§ 3211.1 Lands and deposits to which the act does not apply.

The act does not apply to lands:

(a) Acquired for the development of their mineral deposits,

(b) Acquired by foreclosure or otherwise for resale,

(c) Reported as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.).

(d) In incorporated cities, towns, and villages,

(e) In national parks and monuments,

(f) Set apart for military or naval purposes, including lands within naval petroleum and oil shale reserves, or

(g) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ 3211.2 Stipulations and consent of agency having jurisdiction of land.

(a) Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being adminstered.

(b) All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(c) Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

§ 3211.3 Other regulations applicable; lease forms, applications, and offers.

Except as otherwise specifically provided in this part the regulations prescribed under the mineral leasing laws, and contained in Group 3100 of this chapter, shall govern the disposal and development of minerals under the act to the extent that they are not inconsistent with the provisions of the act. All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

Subpart 3212—Lease Requirements

§ 3212.1 Supplemental information required in offers and applications for leases and permits; place of filing.

(a) Each offer or application for a lease or permit must contain (1) a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed a maximum chargeable acreage permitted to be held for that mineral in federally owned acquired lands in the same State, and (2) a complete and accurate description of the lands for which a lease or permit is desired. If the lands have been surveyed under the rectangular system of public land surveys, and the description can be conformed to such survey system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land survey, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between successive angle points with appropriate ties to established survey corners. If not so surveyed and if within the area of the public land surveys, the lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connected with an official corner of those surveys by courses and distances. If not so surveyed and the tract is not within the area of the public land survey, it must be described in a manner consistent with the description in the deed under which it was acquired, amplified where the deed description does not supply them, to include the courses and distances between the successive angle points on the boundary of the tract, and adequately shown on a plat or map to permit its location within the administrative unit or project of which it is a part. In all cases the description should, if practicable, refer to (i) the administrative unit or project of which the land is a part, the purpose for which the land was acquired by the United States, and the name of the governmental body having jurisdiction over the land, (ii) the names of the persons who conveyed the lands to the United States, (iii) the date of such conveyance, and the place, liber and page number of its official recordation.

(b) An application or offer under the act must be filed in the proper land office as set forth in § 3212.4. Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

§ 3212.2 Restriction on holdings.

The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchargeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3212.3 Leases of future or fractional interests.

(a) *General.* Subject to the provisions of section 3 of the act, noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. There is no required form for applications or offers for noncompetitive leases of any mineral subject to the act, except oil and gas. However, such applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent applicable, conform to and include the information required by: §§ 3211.2, 3211.3, 3212.1 and this section. The terms and conditions of leases covering future or fractional interests in mineral deposits other than oil and gas, of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements under § 3120.3–1 covering future or fractional interests, will be established on an individual case basis.

An application or offer under the act must be filed in the proper land office as set forth in § 3212.4. Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

(b) *Offers to lease and leases covering future interests in oil and gas deposits.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. An application for a future interest lease filed less than one year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3211.2, 3211.3, and 3212.1 and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made. Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement as consideration for issuance of lease on future interest in oil and gas deposits.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate an agreement for approval by the Director. Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable: when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular terms of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Offers for fractional interest oil and gas leases other than future fractional interests.* An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing whether the offeror owns the entire operating rights to fractional mineral interest not owned by the United States in each tract covered by the offer to lease, and if not, the extent of the offeror's ownership in the operating rights in each tract, and the names of other parties who own operating rights in such fractional interests. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than a majority interest of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 3212.4 Offer to lease and issuance of lease.

(a) Except as provided in § 3123.9, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions, or other changes or advertising.

An official form approved by the Director, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management.

(b) Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the land office for the State or land district in which the land is situated, or for land or deposits in States for which there are no land offices, with the Bureau of Land Management, Washington, D.C., 20240, except that offers for lands or deposits in North Dakota or South Dakota, must be filed in the land office at Billings, Montana; for lands or deposits in Nebraska or Kansas in the land office at Cheyenne, Wyoming; and for lands or deposits in Oklahoma and Texas in the land office at Santa Fe, New Mexico. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) Each offer must describe the lands as required by § 3212.1 and may not include more than 2,560 acres except where the rule of approximation applies. That portion of § 3123.1 providing that an offer may not be made for less than 640 acres is not applicable to acquired lands lease offers. Each offer should specify, if possible, the name of the governmental agency having jurisdiction over the surface of the land and also the unit of the project involved.

(d) Except as provided in § 3123.4 an offer which is not filed in accordance with the applicable regulations in Part 3120 or in this part will be rejected and will afford the applicant no priority.

(e) Leases for a whole or fractional future interest will be issued on a form approved by the Director. Such leases will be sent to applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

§ 3212.5 Exchange leases.

(a) Oil and gas leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act. New leases shall be issued for a term of five years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effective as of the first of the month after the filing of the application to exchange. The rental rates for the new lease, for lands not within the known geologic structure of a producing oil or gas field at the time of the filing of the application for exchange, shall be the same as those set forth in § 3125.1, and the royalty rate for such lands shall be 12½ percent. For all other lands, the rental rate for the new lease shall be $1.00 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

(b) Coal, phosphate, sodium, potassium, sulphur, or oil shale leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act subject, in each case, to such appropriate conditions as may be prescribed.

PART 3220—LEASING UNDER THE REORGANIZATION ACT

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Sec.

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Subpart 3227—Fractional or Future Interest Leases and Permits

3227.1 Terms and conditions.
3227.2 Present fractional interest leases or permits.
3227.3 Future or fractional future interest leases.
3227.4 Rejection and termination of applications.

AUTHORITY: The provisions of this Part 3220 issued under R.S. 161, sec. 3, 63 Stat. 683; 5 U.S.C. 22, 30 U.S.C. 192c.

Subpart 3220—Leasing Under the Reorganization Act; General

§ 3220.0–3 Authority.

(a) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior.

(b) Section 3 of the act of September 1, 1949 (63 Stat. 683) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83).

(c) Section 3 of the act of June 23, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the act of June 28, 1952.

§ 3220.0–6 Scope.

(a) Part 3220 applies to the leasing or other disposal of minerals other than oil, gas, oil shale, coal, phosphate, potassium, sodium and sulphur.

(1) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U.S.C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403(a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018).

(2) In acquired lands, except Indian lands and lands in national parks and monuments, under the jurisdiction of the bureaus of the Department of the Interior where authorized by law.

(3) In those lands added to the Shasta National Forest by the act of March 19,

1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(4) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in paragraph (c) of this section.

(b) Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease permit, or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized respresentative of the Secretary of Agriculture as to matters relating to the surface.

§ 3220.0–7 Outstanding prospecting permits and leases.

Prospecting permits and leases heretofore issued by the Department of Agriculture will continue to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

Subpart 3221—Prospecting Permits

§ 3221.1 Filing and contents of applications; filing fees; acreage limitation; qualifications; priority rights.

(a) While there is no required form for an application for a prospecting permit or lease, a form approved by the Director may be used for that purpose. If not, the application should:

(1) Specify the dominant mineral or minerals for which the lease or permit is sought;

(2) Name, if practicable, the branch of the Government agency having jurisdiction over the land and the administrative unit or project of which the land is a part;

(3) Contain a statement of applicant's citizenship; if a corporation, the State of incorporation and that it is authorized to hold a prospecting permit or lease, and a statement that applicant's interests, direct or indirect, in leases, prospecting permits or applications for minerals other than coal, phosphate, sodium, potassium, oil, oil shale, or gas in acquired lands in the same State, do not exceed the allowable acreage prescribed in paragraph (c) of this section.

(4) Contain a complete and accurate description of the lands for which the prospecting permit or lease is desired. If the lands have been surveyed under the rectangular system of public land surveys, and the description can be conformed to such survey system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land survey, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between successive angle points with appropriate ties to established survey corners. If not so surveyed and if within the area of the public land surveys the lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connected with an official corner of those surveys by courses and distances. If not so surveyed and the tract is not within the area of the public land survey, it must be described in a manner consistent with the description in the deed under which it was acquired, amplified where the deed description does not supply them, to include the courses and distances between the successive angle points on the boundary of the tract, and adequately shown on a plat or map to permit its location within the administrative unit or project of which it is a part. Lands "within the area of the public land surveys" are those north and west of the Ohio and Mississippi Rivers (except Texas) and in the States of Mississippi, Alabama, Florida, and Alaska.

(5) Include an accurate map or plat of the lands prepared from the survey thereof or other reliable map source, unless the lands are surveyed under the public land system of surveys.

(b) An application for a prospecting permit or lease may be filed by any citizen or association of citizens of the United States, or corporations organized and existing under the laws of the United States or any State or Territory thereof.

(1) The application shall be filed in triplicate in the appropriate land office. The application must be accompanied by a filing fee of $10 which is not returnable.

(2) An application for a prospecting permit must be accompained by full payment of the first year's rental of 25 cents per acre or fraction thereof, but no less than $20.

(c) No applicant may hold more than 20,480 acres under prospecting permit and lease of which not more than 10,240 acres may be held under lease, provided, however, that the Secretary may authorize a lessee to hold under lease an additional 10,240 acres of land if he finds, upon a satisfactory showing submitted by the lessee that such additional acreage is necessary to promote the orderly development of mineral resources and does not result in undue control of the mineral to be mined, removed and marketed, but in no event shall a lessee hold in excess of 10,240 acres of leased land for the mining of any dominant single mineral, nor shall any person at any one time hold more than 20,480 acres under permit and lease in any one State.

(d) A prospecting permit may not include more than 2,560 acres, and will be issued to the first qualified applicant. The lands in the permit must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. An application for a prospecting permit which covers lands that are not located entirely within an area of six miles square or an area of six surveyed sections in length or width will be rejected in its entirety.

§ 3221.2 Terms and conditions of prospecting permits; rental; bonds.

(a) Prospecting permits are issued on a form approved by the Director for a period of 2 years and grant the permittee the exclusive right to prospect on and explore the described lands to determine the existence of, or workability of, the mineral deposits therein. Only such material may be removed from the land as is necessary to demonstrate the existence of commercial quantities thereof.

(b) A prospecting permit will require payment in advance by permittee of an annual rental of not less than 25 cents per acre or fraction of an acre, but no less than $20 per year. The permittee may also be required, as a condition precedent to the issuance of a permit, to furnish a permit bond.

(c) Prospecting may be carried on with the consent of the appropriate official of the Department, bureau or agency having jurisdiction over the land where no structures are to be erected, and no substantial excavations or disturbances of the surface will be made. Such prospecting shall not be deemed to vest in the prospector an exclusive right of exploration or a preference right to a lease under this part.

§ 3221.3 Extension of permit.

(a) A prospecting permit may be extended for one additional term of 2 years, in the discretion of the signing officer, upon written application made by the permittee and filed in triplicate in the proper land office within 90 days prior to the expiration date of the permit. Such application must be accompanied by a filing fee of $10, which is not returnable. In support of an application for extension of a prospecting permit, the permittee must show that he has diligently performed prospecting activities on the land during the period for which the permit was issued. This requirement may be dispensed with, in the discretion of the authorized officer, upon a satisfactory showing that the permittee's failure to perform diligent prospecting activities was due to conditions beyond permittee's control.

(b) Upon failure of the permittee to file an application for extension within the specified period, the permit will expire 30 days after the end of its primary term without notice to the permittee and the lands will thereupon become subject to new application for prospecting permits.

§ 3221.4 Reward for discovery; preference right lease; bond.

(a) Upon discovery of any valuable deposit of minerals the permittee shall be entitled to a preference right lease for the mineral in any or all of the lands in the permit except as provided for in § 3220.0–6(a).

(b) Should the issuance of the preference right lease, for the acreage applied for, increase the permittee's leased acreage beyond 10,240 acres, such preference right lease will not issue unless the permittee, within the time allowed by the signing officer, relinquishes sufficient of his leased lands to reduce the area of his leaseholds, including the area to be included in the preference right lease, to 10,240 acres except as provided for in § 3221.1(c).

(c) An application for a preference right lease must be filed in the proper land office not more than 30 days after the termination date of the primary or extended term of the permit, and must describe the lands for which the lease is desired; must contain a statement of permittee's interests, direct or indirect, in acquired lands mineral leases except leases covering the leasable minerals mentioned in § 3220.0–6(a); must disclose any change in the information contained in the application for the permit, specify fully the extent the mode of occurrence of the mineral deposit disclosed by the prospecting, and show that a valuable deposit of minerals was discovered before the expiration of the permit.

(d) The application must be accompanied by a payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20. The lease will be issued on a form approved by the Director and dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, except that upon the applicant's request, the lease will be dated the first day of the month following the date the application is filed. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate (12½ percent) and such mining will not constitute a trespass.

(e) The permittee shall be liable for and pay to the United States a royalty of 12½ percent of the gross value of the minerals mined at the point of shipment to market during the period prior to the effective date of the preference right lease, but no mining operations shall be carried on prior to the effective date of such lease except with the written consent of the agency having jurisdiction over the surface of the land and subject to such conditions as the authorized representatives of the agency shall prescribe.

(f) The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee an applicable royalty rate will be established by the lessor for such mineral. The lessee will be required to post a lease bond on a form approved by the Director before the lease will be executed by the Government. The lease will be issued for a period of five or ten years, upon the advice of the agency having jurisdiction over the surface and the United States Geological Survey, with a right in the lessee to renew the same for successive periods of like duration under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover. An application for renewal of the lease must be filed in manner similar to that prescribed for extension of a permit in § 3221.3 (a) and (b) and the provisions of § 3221.3 (a) and (b) are applicable to leases.

Subpart 3222—Competitive Leasing

§ 3222.1 Mineral deposits subject to lease through competitive bidding; leasing units.

(a) Except for preference right leases, as set out in the preceding section, leases for lands containing valuable mineral deposits will be issued only to the qualified person who offers the highest bonus by competitive bidding, either by oral auction or sealed bids or both, as provided in the published notice inviting bids for the issuance of a lease covering such deposits.

(b) Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical mining unit.

§ 3222.2 Application for lease by competitive bidding.

(a) An application for a mineral lease through competitive bidding must be filed in triplicate in the appropriate land office. A form approved by the Director should be used for such an application, though its use is not mandatory. If this form is not used, the application should contain the information specified in § 3221.1 and should be accompanied by evidence that the land applied for is valuable for the mineral deposits named therein, together with a statement as to the character, extent and mode of occurrence thereof.

§ 3222.3 Notice of lease offer.

Notice of the offer of the mineral deposits for lease will be published once a week for 4 consecutive weeks, or for such other periods as the Bureau of Land Management may deem appropriate, in a newspaper of general circulation in the county in which the mineral deposits are situated. A copy of the notice will be posted in the proper Land Office during the period of publication. The notice will set the day and hour of sale, state whether the lease will be offered by oral auction bidding or by sealed bids, or both, and state that the successful bidder will be required to pay the cost of publishing the notice if only one parcel of land is involved. Where more than one parcel is offered, the successful bidder will be required to pay his proportionate share of such cost, which will be that proportion of the cost that the number of parcels awarded to the successful bidder bears to the number of parcels for which high bidders are declared. The notice will specify the place where the oral auction sale is to be held and where sealed bids are to be submitted, and other information pertinent to the offering. The notice will contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders. The notice shall also state that the Government reserves the right to reject any and all bids.

§ 3222.4 Bidding requirements; deposits.

(a) At a sale by oral auction the high bidder must deposit with the officer conducting the sale, on the day of the sale, one-fifth of the amount of his bid and at a sale by sealed bids each bidder must include with his bid one-fifth of the amount of the bid.

(b) If the sale is by oral auction and sealed bids, the oral auction sale will proceed first at the time and place specified therefor in the notice of offering, and the officer conducting the sale will, upon the termination of such oral auction bids, declare the high bidder. Thereupon, the officer conducting the sale will publicly, open and audibly, read all of the sealed bids which were received timely, and the lease will be awarded to the highest bidder, whether an oral auction bidder or a sealed bidder. The lease will be awarded to the high bidder, subject to the submission of proof of his qualifications.

(c) All deposits with bids including rental payments must be made by certified check, cashier's check, bank draft, money order, or cash. Deposits made on rejected or unsuccessful bids will be returned to the bidders.

§ 3222.5 Action by successful bidder.

Three copies of the lease to be awarded will be sent to the successful bidder who will be allowed 30 days from receipt in which to execute such lease, pay the balance of the bonus bid and the first year's rental in full, and file a surety bond in such amount as may be required, but not less than $500 on either of the bond forms specified in § 3222.7 and furnish proof of citizenship and holdings as set forth in § 3221.1(a)(3). If the successful bidder, after being awarded the lease, fails or refuses to execute the same or to otherwise comply with the applicable regulations, his deposit will be forfeited.

§ 3222.6 Rentals.

§ 3222.6–1 Payments and reports.

Rentals under all leases and permits shall be paid to the Manager of the proper land office, as set forth in § 3221.1 (b)(1), except that rentals and royalties on productive mining leases shall be

paid to the Regional Mining Supervisor of the Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

§ 3222.6–2 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate, in the office of the Regional Mining Supervisor of the Geological Survey and a copy thereof filed in the proper land office. Complete information must be furnished showing the necessity for such relief.

(b) The lease will be extended for the period of suspension of operations and production.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary or his authorized representative. Rental and minimum royalty payments will be suspended during any period of suspension of operations and production, beginning with the first day of the lease month on which the suspension of operations and production become effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension or rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

§ 3222.7 Bonds.

Corporate surety prospecting permit or lease bonds may be furnished on a form approved by the Director. In lieu of a corporate surety bond, a personal prospecting permit or lease bond secured by negotiable United States bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on a form approved by the Director.

Subpart 3223—Contracts

§ 3223.1 Approval of operating or development contracts without regard to acreage limitations.

(a) The Secretary of the Interior or his authorized representative may, by and with the concurrence of the Geological Survey, and on such conditions as may be prescribed, approve operating or development contracts, or processing or milling arrangements, made by one or more lessees with one or more persons, associations, or corporations, to justify operations on a large scale for the discovery, development, production or transportation of ores, whenever, in his discretion, and regardless of acreage limitations provided for in this part, the conservation of natural products or the public convenience or necessity may require it, or the interests of the United States may be best subserved thereby.

Subpart 3224—Relinquishment of Prospecting Permit or Lease

(b) Three executed copies of an operating or development contract submitted for approval under this provision must be filed in the proper land office, and a duplicate original with the Regional Mining Supervisor of the Geological Survey. The contract must be accompanied by a statement showing all of the interests held by the contractor designated in the contract in the area, and also the agreed or the proposed plan of operation or development of the leased lands. All of the contracts held by the same contractor, in the area, should be submitted at the same time and full disclosure of the project made.

§ 3224.1 Surrender.

The permittee or lessee may surrender the entire prospecting permit or lease or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof. A relinquishment must be filed in triplicate in the proper land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee or lessee and his surety, to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the lands in accordance with the regulations and terms of the lease, and for the faithful compliance of all of the terms of the prospecting permit or lease.

§ 3224.2 Cancellation or termination of prospecting permit or lease.

(a) Except as provided for in paragraph (b) of this section, if a permittee or lessee fails to comply with the general regulations in force at the date of the prospecting permit or lease, or, as to a lease at the effective date of any readjustment of the terms and conditions thereof, or defaults with respect to any of the terms, covenants, or stipulations of the permit or lease, and such failure or default continues for 30 days after service of written notice thereof by the Government then the permit or lease may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit or lease for any other cause, or for the same cause occurring at any other time. Until such cancellation is noted on the appropriate records of the Land Office, the lands will not be open to further application for permit or lease.

(b) Any prospecting permit or lease shall terminate automatically if the permittee or lessee fails to pay the rental on or before the anniversary date of the permit or lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(c) The termination of the permit or lease for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands included in such prospecting permit or lease are not subject to the issuance of any other prospecting permit or lease. Applications for such permits filed prior to such notation will be rejected.

Subpart 3225—Transfers

§ 3225.1 Transfers, including subleases.

Prospecting permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a prospecting permit or lease will create a new prospecting permit or lease for the transferred portion. A discovery either on the retained or the assigned portion of a prospecting permit will not inure to the benefit of the other. Approval of a transfer will not extend the life of the prospecting permit or the readjustment periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed in triplicate in the proper land office within 90 days after execution, and must be accompanied by a filing fee of $10, which is not returnable. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3221.1 (a) (3) and (b) must be submitted together with an application for approval of the transfer. Before a transfer of a prospecting permit or lease will be approved, the transferee must submit a surety bond if the original permit or lease required the maintenance of a bond. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

Subpart 3226—Royalties

§ 3226.1 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary of the Interior to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low-grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof, or in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the

rate to which they have been so reduced until otherwise authorized by the Secretary of the Interior.

Subpart 3227—Fractional or Future Interest Leases and Permits

§ 3227.1 Terms and conditions.

A prospecting permit for a fractional interest in mineral deposits or a lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer, by and with the consent of the appropriate Government bureau or agency having jurisdiction over the land in which such deposits are located. The terms and conditions of such permits and leases will be established on an individual case basis. No specific form of application for such permits or leases is required, but the application should contain the information required by § 3221.1, as well as the information required by this section where applicable. The application must be filed in triplicate in the proper land office accompanied by a filing fee of $10 which is not returnable.

§ 3227.2 Present fractional interest leases or permits.

An application for a present fractional interest prospecting permit or lease must show whether the applicant owns all of the fractional mineral interest not owned by the United States or all of operating rights thereto. An applicant for such a permit or lease must have a present interest in the minerals. If applicant does not own all of such mineral interests or all of the operating rights thereto, the extent of the applicant's rights thereto must be shown as well as the names of the other owners of such rights. Since the issuance of a permit or lease to one who, upon such issuance, would have less than a majority interest in the minerals or the operating rights thereto is not regarded as being in the Government's interest, an application for a permit or lease, the granting of which would lead to such result, may be rejected.

§ 3227.3 Future or fractional future interest leases.

An applicant for a prospecting permit for a fractional mineral interest or for a future or fractional interest lease must submit, with his application, title evidence of his present interest in the mineral deposits. This may be accomplished by a certified abstract of title or a certificate of title. If applicant is the owner of the operating rights to the minerals and acquired such rights under a lease from or contract with the owner of such minerals, the application should also be accompained by three copies of such lease or contract. A whole or fractional future interest lease or a prospecting permit for a fractional interest will be issued only to an applicant who owns all or substantially all of the present operating rights to the minerals as fee owner, lessee, or operator holding such rights. Future interest leases will become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3227.4 Rejection and termination of applications.

An application for a future interest lease filed less than one year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time will automatically lapse and thereafter only offers for a present interest lease will be considered.

Group 3300—Special Leasing Acts

PART 3310—OIL AND GAS LEASING IN LANDS UNDER RIGHTS-OF-WAY

Subpart 3310—Oil and Gas Leasing in Lands Under Rights-of-Way; General

Sec.
3310.0–3 Authority.

Subpart 3311—Application and Term of Lease

3311.1 Application for lease.
3311.2 Owner of adjoining land allowed to submit bid.
3311.3 Term of lease and of compensatory royalty agreement.

Subpart 3312—Royalties

3312.1 Charge of royalty.
3312.2 Form of agreement to pay compensatory royalty.

Subpart 3313—Forms of Lease and Bond

3313.1 Forms of lease.
3313.2 Form of bond.

AUTHORITY: The provisions of this Part 3310 issued under sec. 6, 46 Stat. 374; 30 U.S.C. 306.

Subpart 3310—Oil and Gas Leasing in Lands Under Rights-of-Way; General

§ 3310.0–3 Authority.

The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301–306), authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

Subpart 3311—Application and Term of Lease

§ 3311.1 Application for lease.

(a) No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in the appropriate land office. Such applications must be filed by the owner of the right-of-way or by his assignee and be accompanied by a filing fee of $10, and, if filed by an assignee, by a duly executed assignment of the right to lease.

(b) The application should detail the facts as to the ownership of the right-of-way, and of the assignment if the application is filed by an assignee; the development of oil and gas in adjacent or nearby lands, the location and depth of the wells, the production, and the probability of drainage of the deposits in the right-of-way. Since rights-of-way are of record in the Bureau of Land Management, a description by metes and bounds is not necessary or required, but each legal subdivision through which the portion of the right-of-way desired to be leased extends should be described.

§ 3311.2 Owner of adjoining land allowed to submit bid.

(a) After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on his own motion, the manager of the land office will serve notice on the owner or lessee of the adjoining lands, as provided in section 3 of the act of May 21, 1930 (46 Stat. 374; 30 U.S.C. 303), allowing him 30 days or such other time as may be provided in the notice within which to submit an offer or bid of the amount or percentage of compensatory royalty such owner or lessee will agree to pay for the extraction through wells on his adjoining land of the oil and gas under and from such right-of-way. Notice to the owner of the right-of-way will be given at the same time allowing him opportunity within the same period to submit a bid or offer as to the amount or percentage of royalty he will pay if a lease is awarded to him.

(b) Award of lease to the owner of the right-of-way, or of a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands, will be made to the bidder whose offer is determined to be to the best advantage to the United States, considering the amount of royalty to be received and the better development of the oil and gas deposits in the right-of-way under the respective means of production and operation.

§ 3311.3 Term of lease and of compensatory royalty agreement.

The term of the lease will be for a period of not more than twenty years, and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

Subpart 3312—Royalties

§ 3312.1 Charge of royalty.

The royalty to be charged will be fixed by the Bureau of Land Management, after consideration of all the facts and circumstances in each case, but will not be less than 12½ percent.

§ 3312.2 Form of agreement to pay compensatory royalty.

The agreement with the owner or lessee of the adjoining land to pay compensatory royalty for the extraction through wells on his adjoining land of the oil and gas in or under the right-of-way will be on a form approved by the Director.

Subpart 3313—Forms of Lease and Bond

§ 3313.1 Form of lease.

The lease issued to the owner of the right-of-way or assignee of such owner will be on a form approved by the Director, modified to conform to the requirements of the law and these regulations.

§ 3313.2 Form of bond.

The bond required under section 2(a) of the lease and by the contractor under agreement to pay compensatory royalty, should be on a form approved by the Director.

PART 3320—ACTS CONCERNING LIMITED AREAS

Subpart 3321—Gold and Silver in Confirmed Private Land Grants

Sec.
3321.0–3 Authority.
3321.1 Application by grantee or his successor in title.
3321.2 Form and contents of application; abstract of title required.
3321.3 Rate of royalty; investment required.
3321.4 Execution of lease.
3321.5 Bond.
3321.6 Form of lease.

Subpart 3322—Asphalt in Oklahoma

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3322.1–1 Lands applicable.
3322.1–2 Area and limitation on holdings.
3322.1–3 Qualifications of applicant.
3322.1–4 Leases for lands disposed of with reservation of asphalt deposits.
3322.1–5 Requirements when lands are within a withdrawal.
3322.1–6 Form of lease.
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3322.2 Royalty, rental and production.
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Subpart 3323—Nevada

3323.1 Silica sands and other nonmetallic minerals in certain areas in Nevada.
3323.1–1 Authority.
3323.1–2 Applicability of other regulations.
3323.1–3 Lands to which applicable.
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3323.2–1 Authority.
3323.2–2 Lands to which applicable.
3323.2–3 Leasing units.
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3323.2–6 Application.
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Subpart 3324—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purpose

3324.0–3 Authority.
3324.1 Lands subject to minerals reservation.
3324.1–1 Lands to which applicable.
3324.1–2 Minerals to be leased.
3324.1–3 Notice to the owner of the surface.
3324.2 Conservation.
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3324.2–2 Bonds.
3324.2–3 Operating regulations.
3324.3 Existing regulations applied to leases of oil, gas, coal, potassium, sodium and phosphate.
3324.4 Form of lease.
3324.5 Minerals other than oil, gas, coal, potassium, sodium and phosphate.
3324.5–1 Leasing units.
3324.5–2 Acreage limitation.
3324.5–3 Royalty and rentals.
3324.5–4 Qualifications of applicants.
3324.5–5 Filing of application.
3324.5–6 Form and contents of application.
3324.5–7 Term of lease.
3324.5–8 Forms of lease.

Subpart 3325—Certain National Forest Lands in Minnesota

3325.0–3 Authority.
3325.1 Minerals to be leased.
3325.2 Consent of Secretary of Agriculture; conditions and stipulations.
3325.3 Existing regulations applicable.

Subpart 3326—Leases for Minerals in Lands Withdrawn for Reclamation Purposes Within Lake Mead Recreation Area

3326.0–3 Authority to lease; description of area.
3326.1 Other regulations applicable.
3326.2 Leasing units.
3326.3 Royalties, rentals and minimum royalties.
3326.4 Applications and qualifications.
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3326.4–2 Applications.
3326.5 Leases.
3326.5–1 Term of lease.
3326.5–2 Lease terms and conditions.
3326.5–3 Leases by competitive bidding.
3326.6 Excepted areas.
3326.7 Disposal of materials.
3326.8 Distribution of proceeds.

Subpart 3321—Gold and Silver in Confirmed Private Land Grants

AUTHORITY: The provisions of this Subpart 3321 issued under sec. 3, 44 Stat. 710; 30 U.S.C. 293.

§ 3321.0–3 Authority.

The act of Congress approved June 8, 1926 (44 Stat. 710; 30 U.S.C. 291–293) authorizes the Secretary of the Interior to lease to the grantee, or those claiming through or under him gold, silver, and quicksilver deposits, or mines or minerals of the same, on lands in private land claims confirmed pursuant to decrees of the court of private land claims with reservation of such minerals or mines.

§ 3321.1 Application by grantee or his successor in title.

Applications for leases shall be filed in the land office of the district in which the lands are situated, by the owner of the land under the confirmed title; that is, the original grantee or his record transferee or successor in title, and may include all or any part of the grant for which the applicant holds title at the date of the application.

§ 3321.2 Form and contents of application; abstract of title required.

Applications shall give name and address of the applicant, describe the land in which the deposits occur, by legal subdivisions of the public surveys, if so surveyed, otherwise by metes and bounds, or if for the entire area in the grant, the name of the grant, area, and date of patent will suffice. The mineral deposits must also be fully described, giving character, mode of occurrence, nature of the formation, kind, and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary to successful operation of the mine or mines contemplated, estimated amount of production of gold, silver, and quicksilver, or any of them, and such other pertinent information the applicant may desire to set forth, including what he considers a reasonable royalty rate under the lease. The applicant must also file with his application a duly authenticated abstract of title showing present ownership of the land, or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 3321.3 Rate of royalty; investment required.

When an application is received by the Bureau of Land Management, it will be considered, and if found sufficient to authorize issuance of lease thereunder, a rate of royalty, not less than 5 percent nor more than 12½ percent of the value of the output of gold, silver, or quicksilver at the mine, will be fixed and the amount of investment under the lease will be determined and prescribed.

§ 3321.4 Execution of lease.

When a lease has been authorized, forms of lease in accordance with the terms prescribed will be furnished to the applicant, who will be allowed 30 days from notice within which to execute and return the lease to the land office and to furnish the required bond.

§ 3321.5 Bond.

A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

§ 3321.6 Form of lease.

Leases will be issued in accordance with the form prescribed in 52 L.D. 21.

Subpart 3322—Asphalt in Oklahoma

Authority: The provisions of this Subpart 3322 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189. Interpret or apply 58 Stat. 483–485, Stat. 76, 84; 16 U.S.C. 482, n–1.

§ 3322.0–3 Authority.

The act of June 28, 1944 (58 Stat. 483–485), authorizes the Secretary of the Interior to lease asphalt deposits in certain lands situated in Oklahoma, acquired under the provisions thereof.

§ 3322.1 General.

§ 3322.1–1 Lands applicable.

The lands or asphalt deposits subject to the regulations in this part are those situated in Oklahoma which were (a) sold to the United States under the terms of a contract executed October 8, 1947, by and between the Secretary of the Interior and officials of the Choctaw and Chickasaw Nations of Indians in Oklahoma, which contract was ratified by the act of June 24, 1948 (62 Stat. 596), and (b) acquired when the purchase price provided in the contract was appropriated by the act of May 24, 1949 (63 Stat. 76, 84).

§ 3322.1–2 Area and limitation on holdings.

Except where the rule of approximation applies, a lease may not include over 640 acres in reasonably compact form. No person, association or corporation may hold, either directly or indirectly, leases for an area that exceeds in the aggregate 2,560 acres.

§ 3322.1–3 Qualifications of applicant.

(a) Leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and where it is filed, together with a statement as to any amendment, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases for asphalt deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock, of all the stock owned by aliens and of all the stock owned by those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 3322.1–2.

§ 3322.1–4 Leases for lands disposed of with reservation of asphalt deposits.

Where lands included in a lease have been or may be disposed of with reservation of the asphalt deposits, rights of surface use are subject to the provisions of the law under which such reservation was made. See the act of February 19, 1912 (37 Stat. 67), and the act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2251 of this chapter.

§ 3322.1–5 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for asphalt lease is within a withdrawal which does not preclude disposition of the asphalt deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of an asphalt lease. Where he recommends that a special stipulation be required to protect the interest of the United States, an appropriate stipulation may be included in the lease.

§ 3322.1–6 Form of lease.

Leases shall be issued on a form approved by the Director. A copy of this, as well as of every other form mentioned in this part, may be obtained from the Land Office, Santa Fe, New Mexico, or from the Director, Bureau of Land Management, Washington 25, D.C.

§ 3322.1–7 Lease bond.

A compliance bond in no event less than $1,000, will be required prior to issuance of the lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate, personal or individual surety bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 3322.2 Royalty, rental, and production.

§ 3322.2–1 Royalty and rental.

(a) The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 25 cents per ton of two thousand pounds of marketable production.

(b) Beginning with the date of the lease, annual rental payment in advance for each acre or part thereof covered by the lease shall be 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years, respectively, and

$1 for each calendar year thereafter during the continuance of the lease, such rental for any year to be credited against royalties accruing under the lease during the year for which the rental was paid.

§ 3322.2–2 Minimum production.

(a) Each lease will provide for the mining of asphalt deposits from the lands involved and the payment of royalty thereon to a value of not less than $1 an acre or fraction thereof each year, beginning with the sixth full calendar lease year, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee or unless operations are suspended upon a showing that the lease can not be operated except at a loss because of unfavorable market conditions.

(b) Applications by lessees for relief from the production requirement of leases shall be filed, in triplicate, with the Mining Supervisor, who is authorized to grant such relief. A copy of each application shall be filed in the land office. Complete information must be furnished showing the necessity for such relief.

§ 3322.3 Competitive leasing.

§ 3322.3–1 Application for lease by competitive bidding.

(a) An application for lease must be filed in duplicate in the land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(3) Evidence that the land is valuable for its asphalt content, with a statement as to the character, extent, and mode of occurrence of the asphalt deposits.

(b) The application must be signed by applicant, or by his attorney in fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 3322.3–2 Notice of lease offer.

Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the lands and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared, and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U.S.C. 1860.

§ 3322.3–3 Bid deposits.

The sucessful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids, must submit with his bid, certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount of the bid, and evidence of qualifications as required by § 3322.1–3.

§ 3322.3–4 Award of lease.

(a) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required, within 30 days from receipt thereof, to execute them, pay the balance of the bonus bids, the first year's rental, and the cost of publication of the notice of lease offer as specified in this section, and file a bond as required by § 3322.1–7. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and deposited in the general fund of the Treasury of the United States. (See act of June 28, 1944, 58 Stat. 463, 485.) If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

(b) If the bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased lessee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3322.1–3.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the lessee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holding similar to that required by § 3322.1–3 and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holding of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3322.1–3.

§ 3322.4 Modification and leasing of additional lands or asphalt deposits.

A lessee may obtain modification of his lease to include asphalt lands or asphalt deposits contiguous to those embraced in his lease if the Manager shall determine, after consultation with the Mining Supervisor, that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 640 acres, except where the rule of approximation applies. The lessee must file his application for modification in duplicate in the land office describing the additional land desired, the reasons for and the advantage to the lessee of such modification. Upon determination by the Manager that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the

land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they may be offered as provided in § 3322.3–2. Each application for modification must be accompanied by a filing fee of $10 which will not be returnable.

§ 3322.5 Renewal leases.

An application for a renewal lease must be filed in duplicate in the land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee filed written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a satisfactory bond as prescribed in § 3322.-1–7. Each application for renewal must be accompanied by a filing fee of $10 which will not be returnable.

§ 3322.6 Termination.

§ 3322.6–1 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rental and royalties and provide for the preservation of any mines or productive works or permanent improvements on the lands relinquished in accordance with the regulations and terms of the lease.

§ 3322.6–2 Cancellation of lease.

If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

§ 3322.7 Transfers of leases.

§ 3322.7–1 Transfers, including subleases.

(a) Lease may be transferred in whole or in part. The approval of a transfer of part of the land in a lease will create a new lease for the transferred portion. The approval of a transfer will not extend the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the lease, as required by § 3322.1–3 must be submitted simultaneously. Before a transfer of a lease will be approved, the transferee must submit a new bond, or the consent of the surety on the lease bond to the substitution of the transferee as principal thereon, and the lease account must be in good standing. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. A transfer will take effect the first day of the month following its approval, or if the transferee requests, in writing, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lease, is not qualified to hold a lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a lease, to be recognized by the Department as the holder of the lease, agreement or interest, there must be furnished the appropriate showing required under § 3322.3–4(b).

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 3322.7–2 Limitation on overriding royalties.

An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

Subpart 3323—Nevada

AUTHORITY: The provisions of this Subpart 3323 issued under 56 Stat. 273 and 44 Stat. 708.

§ 3323.1 Silica sands and other nonmetallic minerals in certain areas in Nevada.

§ 3323.1–1 Authority.

The act of May 9, 1942 (56 Stat. 273), as amended by the act of October 25, 1949 (63 Stat. 886), authorizes the Secretary of the Interior to lease, under the rules and regulations of the act of February 25, 1920 (41 Stat. 437), as amended, so far as applicable, deposits of silica sand and other nonmetalliferous minerals within lands withdrawn by Executive Order No. 5105 of May 3, 1929.

§ 3323.1–2 Applicability of other regulations.

Deposits of oil, gas, phosphate, coal, sodium, and oil shale within the lands shall be subject to disposal pursuant to the applicable regulations issued under the act of February 25, 1920 (41 Stat. 437) as amended. The regulations issued under the act of February 27, 1927 (44 Stat. 1057) shall govern the disposal of potash deposits. The following regulations shall apply to all other deposits of nonmetalliferous minerals within the lands.

§ 3323.1–3 Lands to which applicable.

The act applies to lands withdrawn by Executive Order No. 5105, which withdrew all public lands, not theretofore withdrawn, within the following described townships:

NEVADA

All of Township 15 South, Ranges 66, 67, 68, East, M. D. M.
All of Township 16 South, Ranges 66, 67, 68, East, M. D. M.
All of Township 17 South, Ranges 66, 67, 68, East, M. D. M.

and also a tract described as follows:

That area of unsurveyed land east of Timber Mountain bounded on the north by latitude 37°10'20", on the south by latitude 37°7'46", and lying between meridians of longtitude 116°20'16" and 116°23'28" comprising an area of 9 square miles and including what is known as Fortymile Canyon Pueblo.

§ 3323.1–4 Leasing units.

Leasing units shall consist of legal subdivisions, if the lands are surveyed, of not more than 640 acres of public lands in a reasonably compact form or, if the lands are not surveyed, shall consist of not more than 640 acres in square or rectangular form with north and south and east and west boundaries, so as to approximate legal subdivisions, described by metes and bounds connected to a corner of the public land surveys by course and distance.

§ 3323.1–5 Acreage limitation.

Every applicant for a lease hereunder must show that, with the area applied for, his or its interest or interests in

such leases and other applications therefor, directly or indirectly, will not exceed in the aggregate 2,560 acres.

§ 3323.1–6 Royalty and rentals.

(a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral.

(b) Rental for the first year must be paid at the rate of 25 cents per acre or fraction thereof prior to issuing the lease and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 3323.1–7 Application.

(a) Leases may be issued to (1) citizens of the United States, (2) associations of such citizens, or (3) corporations organized under the laws of the United States or of any State or territory thereof.

(b) Application must be accompanied by a filing fee of $10 and filed in the proper land office.

(c) No specific form of application is required, but it should cover, in substance, the following points, namely:

(1) Applicant's name and address.

(2) Proof of citizenship of applicant; by a statement of such fact if native born; or, if naturalized, by a statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(3) A statement of all holdings by the applicant of leases under these regulations, pending applications therefor and interests, directly or indirectly, held in such leases.

(4) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(5) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such exploration will be prosecuted.

(6) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

(7) The right is reserved to offer the lease by competitive bidding to the responsible bidder offering the highest cash bonus, in which case the filing of the application will not give any priority to the applicant if he is not the successful bidder.

§ 3323.1–8 Lease requirements.

(a) *Term of lease.* Leases will be issued for a period of 5 years subject to renewal at the expiration thereof for additional periods of 5 years each, on such reasonable terms as may be prescribed at the time of such renewal. An application for renewal of a lease must be filed in duplicate in the appropriate land office within 90 days prior to the expiration of the lease term and be accompanied by a filing fee of $10, which will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of a lease, the lessee will be required to submit a new bond as prescribed in paragraph (b) of this section.

(b) *Bonds.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease.

(c) *Form of lease.* Leases issued pursuant to this part shall be on a form approved by the Director.

§ 3323.2 Leases of sand and gravel in certain lands patented to the State.

§ 3323.2–1 Authority.

The act of June 8, 1926 (44 Stat. 708), authorizes the Secretary of the Interior to dispose of the reserved minerals in the lands patented to the State of Nevada, under such conditions and under such rules and regulations as he may prescribe. The regulations in this § 3323.2 are promulgated for the purpose of permitting the disposal of valuable deposits of sand and gravel in such lands.

§ 3323.2–2 Lands to which applicable.

The act applies to the lands patented to the State of Nevada which are described in the following schedule.

SCHEDULE OF LANDS PATENTED TO THE STATE OF NEVADA UNDER THE ACT OF JUNE 8, 1926 (44 STAT. 708), AND SUBJECT TO LEASE UNDER CIRCULAR NO. 1622

T. 17 N., R. 24 E., M. D. M., Nevada,
Sec. 34, SE¼;
Sec. 35, NW¼SW¼.
T. 9 N., R. 29 E., M. D. M.,
Sec. 5, lots 1, 2, 3, 4, 5, 6, SW¼NW¼;
Sec. 8, lots 1 and 2, NE¼NW¼;
Sec. 16, lot 2;
Sec. 21, lots 1, 2, 4, 5, 6, SE¼NW¼, NE¼SW¼, SW¼SE¼;
Sec. 22, lot 1;
Sec. 26, lots 1, 2, 3, NW¼SW¼, SE¼SW¼;
Sec. 27, lots 1, 2, 3, NW¼NW¼, SW¼NE¼;
Sec. 35, lots 1, 2, 3, 4, SW¼NE¼, NW¼SE¼.
T. 35 N., R. 55 E., M. D. M.,
Sec. 36, all.
T. 14 N., R. 67 E., M. D. M.,
Sec. 27, S½;
Sec. 28, S½.
T. 22 S., R. 61 E., M. D.M.,
Sec. 1, SE¼SE¼;
Sec. 11, SE¼NE¼, E½SW¼, SE¼;
Sec. 12, S½NW¼, SW¼, E½;
Sec. 13, all.
T. 21 S., R. 62 E., M.D.M.,
Sec. 19, SE¼;
Sec. 20, S½NW¼, SW¼;
Sec. 23, E½NW¼, NW¼SW¼;
Sec. 29, N½NW¼, E½SE¼;
Sec. 31, SE¼SE¼;
Sec. 32, S½;
Sec. 33, SW¼, E½.
T. 22 S., R. 62 E., M. D. M.,
Sec. 1, SW¼SW¼;
Sec. 5, lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, lots 1 and 7, S½NE¼, SE¼, E½SW¼;
Sec. 7, lots 1, 2, 3, 4, E½W½, E½;
Sec. 8, all;
Sec. 9, N½, NE¼SE¼, S½SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½, S½NE¼, SE¼;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1, 2, 3, 4, E½W½, E½.
T. 23 S., R. 63 E., M. D. M.,
Sec. 11, W½;
Sec. 15, E½;
Sec. 22, E½.
T. 16, S., R. 66 E., M. D. M.,
Sec. 25, N½;
Sec. 26, W½NW¼, NW¼SW¼.
T. 17 S., R. 66 E., M. D. M.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½;
Sec. 12, all;
Sec, 13, all;
Sec. 14, E½;
Sec. 23, all;
Sec. 24, all;
Sec. 26, N½;
Sec. 27, NE¼.
T. 4 S., R. 67 W., M. D. M.,
Sec. 19, E½NW¼, W½NE¼, SE¼NE¼.
T. 17 S., R. 67 E., M. D. M.,
Sec. 13, S½;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, N½;
Sec. 27, N½.
T. 1 S., R. 68 E., M. D. M.,
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4, E½W½E½.
T. 2 S., R. 68 E., M. D. M.,
Sec. 6 lots 1, 2, 3, 4, 5, SE¼NW¼, S½NE¼.
T. 5 S., R. 71 E., M. D. M.,
Sec. 16, SW¼SW¼;
Sec. 17, E½;
Sec. 21, N½NW¼, SE¼NW¼, NE¼SW¼, SW¼NE¼, W½SE¼, lots 2, 3.

Containing 25,499.47 acres.

§ 3323.2–3 Leasing units.

A leasing unit in any case shall consist of such area of land as shall be determined by the authorized officer of the Department of the Interior to constitute an economic working unit based upon the quantity of sand and gravel in the land, the available market for sand and gravel and such other factors as he may determine to be material.

§ 3323.2–4 Acreage limitation.

In no case shall more than 2,560 acres be leased to any one person, association, or corporation. Every applicant for a lease must show that, with the area applied for, his or its direct or indirect interests in such leases and other application therefor, will not exceed in the aggregate 2,560 acres.

§ 3323.2–5 Royalty and rentals.

(a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market.

(b) Rental for the first year must be paid prior to issuance of the lease at the rate of 25 cents per acre or fraction thereof and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 3323.2–6 Application.

(a) Leases may be issued to (1) citizen of the United States, (2) associations of such citizens, or (3) corporations organized under the laws of the United States or of any State or territory thereof.

(b) Application must be accompanied by a filing fee of $10 and filed in the proper land office.

(c) No specific form of application is required, but it should cover, in substance, the following points, namely:

(1) Applicant's name and address.

(2) Proof of citizenship of applicant; by a statement of such fact if native born; or, if naturalized, by a statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(3) A statement of all holdings by the applicant of leases under these regulations pending applications therefor and interests, directly or indirectly, held in such leases.

(4) Description of the land for which the lease is desired, by legal subdivisions, a statement as to whether the land is occupied or is being used, the nature and extent of such occupation and use and of any improvements on the land.

(5) Proposed method of conducting exploratory operations, amount of capital available for such operations, the diligence with which such exploration will be prosecuted, and the extent that operations are likely to interfere with any use that is being made of the land by the surface owner.

(6) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

§ 3323.2–7 Lease term and requirements.

(a) *Term of lease.* Leases will be issued for a period of 5 years subject to such special terms as may be deemed necessary in the particular case to protect the rights of the surface claimant and in the discretion of the authorized officer, may be renewed at the expiration thereof for additional periods of 5 years each, on such reasonable terms as he may prescribe at the time of such renewal. An application for renewal of a lease must be filed in duplicate in the appropriate land office within 90 days prior to the expiration of the lease term and be accompanied by a filing fee of $10, which will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part. Thereafter the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of a lease, the lessee will be required to submit a new bond.

(b) *Bonds.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with provisions of the lease, and for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

(c) *Form of lease.* Leases will be issued on a form approved by the Director.

(d) *Transfers of leases.* Leases issued under the authority specified in §§ 3323.1–1 and 3323.2–1 may be transferred in whole or in part. To the extent applicable, the regulations in § 3322.7–1 shall govern all transfers of such leases.

Subpart 3324—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purpose

AUTHORITY: The provisions of this Subpart 3324 issued under 47 Stat. 1478, 49 Stat. 1482, 2026.

§ 3324.0–3 Authority.

The act of March 3, 1933 (47 Stat. 1487), as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026), authorizes the Secretary of the Interior to dispose of the reserved minerals in the lands patented to the State of California pursuant thereto, at such times and under such conditions as he may prescribe. This subpart is promulgated for the purpose of permitting the disposal of the mineral deposits in such lands.

§ 3324.1 Lands subject to minerals reservation.

§ 3324.1–1 Lands to which applicable.

The regulations in this subpart 3324 apply to the lands patented to the State of California for park purposes.

§ 3324.1–2 Minerals to be leased.

All disposal of minerals within the reserved areas covered by this section shall be by lease.

§ 3324.1–3 Notice to the owner of the surface.

The manager of the land office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

§ 3324.2 Conservation.

§ 3324.2–1 Protection of surface.

All leases issued pursuant to this § 3324.2 shall be conditioned upon compliance by the lessee with all of the laws or rules and regulations of the surface owner for the safeguarding and protection of the plant life, scenic features and park or recreational improvements on the land, not inconsnstent with the terms of the lease or this § 3324.2. The lease shall also provide that any mining work performed upon the lease shall be located consistent with any requirements of the owner of the surface necessary to the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine for all necessary purposes shall be on a route to be first approved by the surface owner or his duly authorized representative.

§ 3324.2–2 Bonds.

Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

§ 3324.2–3 Operating regulations.

All lessees will be required to operate under the applicable operating regulations of this Department. The operating regulations are contained in Title 30: Those applicable to coal in Part 211, to oil in Part 221, and to potash, oil shale, sodium and phosphate, sulphur, gold, silver and quicksilver in Part 231. Leases for minerals not listed in the preceding sentence will be governed by the operating regulations in 30 CFR Part 231.

§ 3324.3 Existing regulations applied to leases of oil, gas, coal, potassium, sodium and phosphate.

The regulations contained in Parts 3100 and 3120 of this chapter to the extent that they are applicable and not inconsistent with this section shall govern oil and gas leases issued under this section. In like manner the regulations in Groups 3000 and 3100 so far as applicable shall govern the leasing respectively of coal, potassium, sodium and phosphate within the area.

§ 3324.4 Form of lease.

Oil and gas leases will be issued on forms approved by the Director, with such changes in language as may be required. Leases for the other minerals will be upon the forms prescribed for the leasing of such minerals under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended and supplemented with necessary deletions and additions.

§ 3324.5 Minerals other than oil, gas, coal, potassium, sodium and phosphate.

§ 3324.5–1 Leasing units.

A leasing unit in any case shall consist of such area of land as shall be determined by the authorized officer to constitute an economic working unit based upon the quantity of the leased mineral in the land, the available market therefor and such other factors as he may determine to be material.

§ 3324.5–2 Acreage limitation.

In no case shall more than 2,560 acres be leased to any one person, association or corporation. Every applicant for a lease must show that, with the area applied for, his or its direct or indirect interests in such leases and other applications therefor, will not exceed in the aggregate 2,560 acres.

§ 3324.5–3 Royalty and rentals.

(a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market.

(b) Rental for the first year must be paid prior to issuance of the lease at the rate of 25 cents per acre or fraction thereof and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 3324.5–4 Qualifications of applicants.

Leases may be issued to (a) citizens of the United States, (b) associations of such citizens, or (c) corporations organized under the laws of the United States or of any State or Territory thereof, provided as to corporations, that no appreciable amount of the stock is held by citizens of countries which do not permit similar or like privileges to citizens of the United States.

§ 3324.5–5 Filing of application.

Applications must be accompanied by a minimum fee of $10 for each application embracing not more than 800 acres and an additional fee of $2 for each 160 acres or fraction thereof over 800 acres, and be filed in the appropriate land office.

§ 3324.5–6 Form and contents of application.

No specific form of application is required, but it should cover, in substance, the following points, namely:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant; by statement of such fact if native born; or, if naturalized, by statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(c) A statement of all holdings by the applicant of leases under this section pending applications therefor and interests, directly or indirectly, held in such leases.

(d) Description of the land for which the lease is desired, by legal subdivisions, a statement as to whether the land is occupied or is being used, the nature and extent of such occupation and use and of any improvements on the land.

(e) Proposed method of conducting exploratory operations, the estimated duration of such exploration and the extent that operations are likely to interfere with the use of the land for the purposes for which it was granted.

§ 3324.5–7 Term of lease.

Leases will be issued for a period of five years and, in the discretion of the authorized officer upon application of the lessee filed within the 90-day period immediately preceding the expiration date of the lease, may be renewed at the expiration thereof for additional periods of five years each, on such reasonable terms as he may prescribe at the time of such renewal.

§ 3324.5–8 Forms of lease.

Leases will be issued on a form approved by the Director.

Subpart 3325—Certain National Forest Lands in Minnesota

AUTHORITY: The provisions of this Subpart 3325 issued under 64 Stat. 311; 16 U.S.C. 508b.

§ 3325.0–3 Authority.

The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)) permits the prospecting, development, and utilization of those mineral resources in public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 148 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws, and for the development and utilization of which no other authority exists. The Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended provides for the leasing of oil, gas, oil shale, coal, phosphate, sodium, and potassium deposits in public domain lands, including such lands generally in national forests. See Group 3100 of this chapter.

§ 3325.1 Minerals to be leased.

All disposal of mineral resources covered by this regulation shall be by lease or permit.

§ 3325.2 Consent of Secretary of Agriculture; conditions and stipulations.

Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

§ 3325.3 Existing regulations applicable.

To the extent that they are applicable and not inconsistent herewith, the leasing of minerals under the act of June 30, 1950, shall be governed by Part 3220. Any lease or permit issued under this subpart shall state that it is subject to the terms and provisions of the act of June 30, 1950.

Subpart 3326—Leases for Minerals in Lands Withdrawn for Reclamation Purposes Within Lake Mead Recreation Area

AUTHORITY: The provisions of this Subpart 3326 issued under sec. 10, 53 Stat. 1196, as amended; 43 U.S.C. 387.

§ 3326.0–3 Authority to lease; description of area.

(a) Section 10 of the act of August 4, 1939 (53 Stat. 1196), as amended August 18, 1950 (64 Stat. 463; 43 U.S.C. 387), inter alia, authorizes the Secretary of the Interior in his discretion to permit the removal of sand, gravel and other minerals from lands and interests in lands withdrawn or acquired for reclamation purposes and to grant leases and licenses for periods not to exceed 50 years affecting such withdrawn or acquired lands.

(b) The area subject to the regulations in this part is that area surrounding Lake Mead in Nevada and Arizona with its greatest extension from north to south from the south boundary of Township 14 South in parts of Ranges 68 and 69 East, Mount Diablo Meridian to the south boundary of Township 21 North, Range 21 West of the Gila and Salt River Meridian and the center of Range 66 and part of 65 East, Township 32 South, Mount Diablo Meridian and its greatest extension east and west from the approximate center of Township 32 and parts of Townships 31 and 33 North, Range 8 West, Gila and Salt River Meridian to within Townships 21, 22 and 23 South, Range 63 East, Mount Diablo Meridian. The exact description of the lands included in the area may be obtained from a map entitled "Lake Mead National Recreation Area, Arizona-Nevada (NRA—L. M. 2291), Revised March 1955," copies of which are on file in the office of the Superintendent, Lake Mead National Recreation Area, Boulder City, Nevada, and in the land offices of the Bureau of Land Management at Reno, Nevada, and Phoenix, Arizona.

§ 3326.1 Other regulations applicable.

Except as otherwise specifically provided in Subpart 3326 the regulations contained in Parts 3100 and 3130, and in 30 CFR Part 2131 shall govern the leasing of mineral deposits other than coal, oil, gas, phosphate, potassium and sodium, the excepted minerals being

governed by regulations issued under the Acts of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281), as amended, to which Group 3100 is specifically applicable.

§ 3326.2 Leasing units.

Leasing units may not exceed 640 acres conisisting of legal subdivisions of the lands if surveyed, in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions described by metes and bounds connected to a corner of the public survey by courses and distances. The officer issuing any lease may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3326.3 Royalties, rentals and minimum royalties.

(a) The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 2 percent of the amount or value of the minerals mined.

(b) Rentals shall not be less than 25 cents per acre payable annually until production is obtained.

(c) After production is obtained the lessee must pay a minimum royalty of $1 per acre.

§ 3326.4 Applications and qualifications.

§ 3326.4–1 Qualifications of applicants.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

§ 3326.4–2 Applications.

An applicant must give his name and address and citizenship qualifications in the manner prescribed in § 3132.2, describe the land for which a lease is desired in terms of legal subdivisions if surveyed, otherwise by metes and bounds and state the kind of mineral for which a lease is desired. The applicant must also give the reasons why he believes the mineral sought to be leased can be developed in the land in paying quantities and furnish such facts as are available to him respecting the known occurrence of the mineral in the land, the character of such occurrence and its probable worth as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3326.5 Leases.

§ 3326.5–1 Term of lease.

Leases will be issued for a period of 5 years and any lease in good standing will be subject to renewal for successive 5-year terms on such reasonable terms as may be prescribed by the Secretary of the Interior at the time of any such renewal upon application filed within 90 days prior to the termination of the lease term for which renewal is sought unless otherwise provided by law or unless the land has been restored from the withdrawal at the expiration of such term.

§ 3326.5–2 Lease terms and conditions.

Each lease will contain provisions for the following: Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions; occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals. No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals; lessee shall not conduct operations in such a manner as to contaminate the waters of Lake Mead or Lake Mohave through dumping, drainage or otherwise. Lessee shall not erect any structures or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor. The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3326.5–3 Leases by competitive bidding.

The right is reserved to offer competitively a lease for any land applied for under this part if, in the judgment of the State Director, there is evidence of a competitive interest in the land, or if the Geological Survey finds that the land contains a deposit in paying quantities of the mineral to be leased.

§ 3326.6 Excepted areas.

Minerals deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(a) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including, but not limited to, electric transmission lines, telephone lines, pipe lines, and railroads.

(b) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(c) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area, (NRA—L. M. 2291).

(d) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map, (NRA—L. M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

§ 3326.7 Disposal of materials.

Materials within the public lands covered by the regulations in this part which are not subject to lease hereunder shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

§ 3326.8 Distribution of proceeds.

All receipts derived from permits or leases issued under this subpart will be deposited by the Bureau of Land Management into the same funds or accounts in the Treasury for distribution in the same manner as prescribed as to national forest land for other national forest revenue by 16 U.S.C., sections 499, 500 and 501 and as prescribed as to reclamation land for other reclamation revenue by 43 U.S.C., section 394.

PART 3380—OUTER CONTINENTAL SHELF MINERAL DEPOSITS

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AUTHORITY: The provisions of this Part 3380 issued under sec. 15, 67 Stat. 464; 43 U.S.C. 1334. Interpret or apply secs. 6, 8, 67 Stat. 465, 468; 43 U.S.C. 1335, 1337.

Subpart 3380—Outer Continental Shelf Mineral Deposits; General

§ 3380.0–3 Authority.

The Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462), referred to in this part as "the act", among other things, authorizes the Secretary of the Interior to issue on a competitive basis leases for oil and gas, sulphur, and other minerals in submerged lands of the outer Continental Shelf, as defined in section 2 of the act. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands are applicable to the submerged lands of the outer Continental Shelf.

§ 3380.1 Persons qualified to hold leases.

Mineral leases issued pursuant to section 8 of the act may be held only by citizens of the United States over 21 years of age, associations of such citizens, States, political subdivisions of a State, or private, public, or municipal corporations organized under the laws of the United States or of any State or Territory thereof.

§ 3380.2 Leasing maps.

(a) Any area of the outer Continental Shelf which has been appropriately platted as provided in paragraph (b) of this section is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act, unless before any lease is offered or issued the unit is (1) withdrawn from disposition pursuant to section 12(a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the act.

(b) As the need arises, the Bureau of Land Management will prepare official leasing maps of areas of the outer Continental Shelf, which will be made to conform so far as practicable to the method of tract designation established by the adjoining State. The area included in each mineral lease shall be described in accordance with the official leasing map.

(c) Each oil and gas lease issued pursuant to section 8 of the act shall cover a compact area, which shall not exceed 5,760 acres.

§ 3380.3 Helium.

Each lease issued or continued under the act shall be subject to a reservation by the United States of the ownership of and the right to extract helium from all gas produced from the leased area, subject to such rules and regulations as shall be prescribed by the Secretary of the Interior. In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area in the manner required by the United States, for the extraction of helium in such plant or reduction works for that purpose as the United States may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof. The lessee shall not suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which he is not reasonably compensated, save for the value of the helium extracted. The United States shall have the right to erect, maintain, and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium.

§ 3380.4 Payments of filing charges, bonuses, rentals and royalties.

All payments to the United States required by the act or the regulations in this part shall be made to the oil and gas supervisor of the Geological Survey for the region in which the leased area is situated, except that payments of filing charges, bonuses and first year's rental shall be made to the manager of the appropriate field office, Bureau of Land Management, unless otherwise directed by the Secretary. All payments should be made by check, bank draft, or money order payable to the United States Geological Survey, if the payments are made to the Geological Survey, or to the Bureau of Land Management, if the payments are made to that Bureau.

Subpart 3381—Cooperative Conservation Provisions

§ 3381.1 Unit plans, pooling, and drilling agreements.

Section 5(a)(1) of the act authorizes the Secretary in the interest of conservation to provide for unitization, pooling and drilling agreements. Such agreements may be initiated by lessees or where in the interest of conservation they are deemed necessary they may be required by the Secretary.

§ 3381.2 Application for approval of unit plan.

The procedure for obtaining the approval of a unit plan of development is contained in 30 CFR Part 226. "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit areas is situated.

§ 3381.3 Pooling or drilling agreements.

(a) With the approval of the Secretary, pooling or drilling agreements may be made between lessees for the purposes of (1) utilizing a common drilling platform to develop adjacent or adjoining leases; (2) permitting operators or pipeline companies to enter into contracts involving a number of leases sufficient to justify operations on a large scale for the discovery, development, production or transporation of oil and gas, sulphur, or other minerals and to finance the same; or (3) for other purposes in the interest of conservation.

(b) A contract submitted for approval under these provisions should be filed

with the oil and gas supervisor, together with enough copies to permit retention of 5 copies by the Department after approval. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination and prescribe the conditions on which the contract is approved.

§ 3381.4 Subsurface storage of oil or gas.

(a) In order to avoid waste or to promote conservation of natural resources, and when it can be shown that no undue interference with operations under existing leases will result, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil or gas in the lands of the outer Continental Shelf, whether or not produced from the outer Continental Shelf. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in any lease of the area involved when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease of an area used for the storage of oil or gas shall not be deemed to expire during the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands or interests in the lands involved, the parties in interest, including lessees of other mineral interests, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such storage. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

§ 3381.5 Directional drilling.

A lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directionally drilling under the leased area through any directional well surfaced on adjacent or adjoining land, and production, drilling, or reworking of any such directional well shall be considered production or drilling or reworking operations (as the case may be) on the leased area for all purposes of the lease.

Subpart 3382—Issuance of Leases

§ 3382.1 Kind and term.

In accordance with the provisions of section 8 of the act, all leases will be issued competitively upon the Department's motion or upon a request describing the area and expressing an interest in leasing a unit or units addressed to the Director, Bureau of Land Management, Washington 25, D.C., hereinafter referred to as the Director, with a copy to the oil and gas supervisor. From time to time the Director may issue calls for the submission of requests for oil and gas or other mineral lease offerings in specified areas. Leases will be awarded to the highest qualified bidder on the basis specified in the notice of lease offer. All oil and gas leases shall be for a term of 5 years and so long thereafter as oil or gas may be produced from the leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted thereon. All sulphur leases shall be for a term of 10 years and so long thereafter as sulphur may be produced from the leased area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon. Other mineral leases shall be for such terms as may be prescribed by the Secretary at the time of offering the leases.

§ 3382.2 Extension of leases by drilling or well reworking operations.

(a) The Secretary shall be deemed to have approved, within the meaning of section 8(b)(2) of the Outer Continental Shelf Lands Act, drilling or well reworking operations, conducted on the leased area in the following instances:

(1) If, after discovery of oil or gas in paying quantities has been made on the leasehold, and within 90 days prior to expiration of the five-year term or any extension thereof, or thereafter, the production thereof shall cease at any time, or from time to time, from any cause and production is restored or drilling or well reworking operations are commenced within 90 days thereafter, and such drilling or well reworking operations (whether on the same or different wells) are prosecuted diligently until production is restored in paying quantities.

(2) If, within 90 days prior to expiration of the five-year term or any extension thereof, or thereafter, at any time, or from time to time, lessee is engaged in drilling or well reworking operations on the leasehold and there is no well on the leasehold capable of producing in paying quantities and the lessee diligently prosecutes such operations (whether on the same or different wells) with no cessation of more than 90 days.

(b) The Secretary may approve such other operations for drilling or reworking upon application of lessee.

(c) Nothing in this section obviates the necessity of obtaining the Oil and Gas Supervisor's approval of a plan or notice of intention to drill or of complying with the other provisions of 30 CFR Part 250.

§ 3382.3 Notice of lease offer.

Notice of the offer of lands for lease will be given by publication at the expense of the United States in the FEDERAL REGISTER, as the official publication, and in such other publications as may be authorized and the first publication shall be at least 30 days prior to the date of sale. The notice will set the place, date, and hour at which the bids will be opened. All sealed bids in response to any such notice must be filed at the place, and prior to the time set for opening bids. The notice may contain special conditions which will become part of the lease to be issued.

§ 3382.4 What must accompany bids.

(a) A separate bid must be submitted for each lease unit described in the notice of lease offer. A bid may not be submitted for less than an entire unit. Each bidder must submit with his bid a certified or cashier's check or bank draft on a solvent bank, or a money order or cash, for one-fifth of the amount of the cash bonus. If the bidder is an individual, he must submit with his bid a statement of his citizenship. If the bidder is an association (including a partnership), the bid shall be accompanied also by a certified copy of the articles of association or appropriate reference to the record of the Bureau of Land Management in which such a copy has already been filed, with a statement as to any subsequent amendments. If the bidder is a corporation, the following additional information shall be submitted with the bid.

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the by-laws indicating that the person signing the bid has authority to do so, or, in lieu of such a copy, a certificate by the secretary or the assistant secretary of the corporation to that effect, over the corporate seal or appropriate reference to the record of the Bureau of Land Management in connection with which such articles and authority have been previously furnished.

(b) All bidders are warned against violation of the provisions of Title 18 U.S.C. section 1860, prohibiting unlawful combination or intimidation of bidders.

§ 3382.5 Award of lease.

Following the public opening of the sealed bids as provided for in the notice of lease offer, the authorized officer, subject to his right to reject any and all bids will award the lease to the successful bidder. In the event the highest bids are tie bids, tie bidders may file with the Director within 15 days after notification an agreement to accept the lease jointly, otherwise all bids will be rejected. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened, all bids for such lease will be considered rejected. Notice of his action will be transmitted promptly to the several bidders. If the lease is awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from his receipt thereof to execute them, pay the first year's rental, the balance of the bonus bid, and file a bond as required in § 3384.1. Deposits on rejected bids will be returned. If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations,

his deposit will be forfeited and disposed of as other receipts under the act. If before the lease is executed on behalf of the United States the land is withdrawn or restricted from leasing, all payments made by the bidder will be refunded. If the awarded lease is executed by an agent acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the agent to execute the lease. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed on behalf of the United States, and one fully executed copy will be mailed to the successful bidder.

§ 3382.6 Form.

Oil and gas leases and leases for sulphur will be issued on forms approved by the Director. Other mineral leases will be issued on such forms as may be prescribed by the Secretary.

§ 3382.7 Dating of leases.

All leases issued under the regulations in this part will be dated and become effective as of the first day of the month following the date the leases are signed on behalf of the lessor, except that, when prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

Subpart 3383—Rentals and Royalties

§ 3383.1 Rentals.

An annual rental shall be due and payable in advance on the first day of each lease year prior to discovery at the rate specified in the lease. The owner of any lease created by the assignment of a portion of a producing lease and on which assigned portion there is no discovery shall be required to pay an annual rental for such assigned portion at the rate per acre specified in the lease payable each lease year following the year in which the assignment became effective and prior to a discovery on such segregated portion.

§ 3383.2 Royalties.

Royalties shall be at the rate specified in the lease but in no event shall the royalty on oil and gas be less than 12½ percent of the amount or value of the production saved, removed or sold from the lease, nor on sulphur less than 5 percent of the gross production of value of the sulphur at the wellhead.

§ 3383.3 Minimum royalty.

Each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 3383.4 Compensatory payments, extension of lease.

In the event that an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and in the event that the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

§ 3383.5 Suspension of operations and production; royalty and rental relief.

(a) In addition to the provisions of section 12 (c) and (d) of the act, in the event that the Director of the Geological Survey in the interest of conservation directs the suspension of both operations and production with respect to any lease no payment of rental or royalty will be required during the period of suspension; and the term of the lease will be extended by a period equivalent to the period of suspension. In the event that the Director of the Geological Survey assents, at the request of a lessee, to a suspension of both operations and production under a lease or directs or assents to a suspension of operations only or production only, the term of the lease will not be deemed to expire so long as the suspension remains in effect but the lessee will not be relieved of his obligation to pay rental, minimum royalty, or royalty, as the case may be, during the term of suspension. In the event a leased area contains only a well or wells capable of producing gas in paying quantities but which gas cannot be produced because of the lack of transportation facilities, the Director of the Geological Survey shall, upon application, grant producing relief subject to the conditions of this paragraph for a maximum period not to exceed five years commencing with the lease year beginning on or after the date of discovery, or the effective date of the regulations in this part, whichever is later. Any further suspension will be granted only pursuant to the other provisions of this paragraph. As to leases maintained under section 6 of the act which cover minerals in addition to oil and gas, suspensions may be made separately as to oil and gas or as to any other mineral designated in the suspension, order, or grant.

(b) In order to increase the ultimate recovery of minerals and in the interest of conservation, the Director of the Geological Survey, whenever he determines it necessary to promote development or finds that a lease cannot be successfully operated under the terms provided therein, may reduce the rental, minimum royalty, or royalty on the entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes. An application for any of the above relief shall be filed in triplicate with the Director of the Geological Survey. It must contain the serial number of the lease; the name of the record title holder; a description of the area included in the lease; the number, location, and status of each well that has been drilled; a tabulated statement for each month, covering a period of not less than six months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of expenses and costs of operating the entire lease and of the income from the sale of any leased products, and all facts tending to show whether the wells or workings can be successfully operated upon the rental or royalty fixed in the lease. Where the application is for a reduction of royalty, full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid, and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

Subpart 3384—Bonds

§ 3384.1 Amount of bond required of lessee.

The successful bidder prior to the issuance of an oil and gas or sulphur lease must furnish a corporate surety bond in the sum of $15,000 conditioned on compliance with all of the terms of the lease, unless he already maintains or furnishes a bond in the sum of $100,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by him on the Outer Continental Shelf in the (a) Gulf of Mexico, (b) along the Pacific Coast, or (c) along the Atlantic Coast, as may be appropriate. An operator's bond in the same amount may be substituted at any time for the lessee's bond. The United States reserves the right to require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary. The amount of bond coverage on leases for other minerals will be determined at the time of the offer to lease and will be stated in the notice of lease offer. Where upon a default, the surety on an Outer Continental Shelf Mineral Lease Bond makes payment to the Government of any indebtedness under a lease secured thereby, the face amount of such bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond, the principal shall post a new bond, on a form approved by the Director, in the amount of $100,000 within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any bond in force at the time of the approval of the amendment of this section by filing in the local office of the Bureau of Land Management in New Orleans, Louisiana, a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this section.

§ 3384.2 Form of bond.

Bonds furnished by lessee or operator for a single lease will be on forms approved by the Director. The $100,000 bond will be on a form approved by the Director.

Subpart 3385—Assignments or Transfers

§ 3385.1 Assignment of leases or interests therein.

Leases, or any undivided interest therein, may be assigned in whole or as to any officially designated subdivision subject to the approval of the authorized officer, to any one qualified under § 3380.1 to take and hold a lease. Any assignment made under this section shall, upon approval, be deemed to be effective on and after the first day of the lease month following its filing in the Bureau of Land Management, Washington 25, D.C., unless at the request of the parties an earlier date is specified in the Director's approval. The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

§ 3385.2 Requirements for filing of transfers.

(a) (1) All instruments of transfer of a lease or of an interest therein, including operating agreements, subleases, and assignments of record interests, must be filed in triplicate for approval within 90 days from the date of final execution with a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and must contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests, or payments out of production, may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or sublease signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney in fact to execute the assignment or application and the statement required by § 3382.4.

(c) Where an assignment creates a segregated lease a bond must be furnished in the amount prescribed in § 3384.1. Where an assignment does not create separate leases the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) In order for the heirs or devisees of a deceased holder of a lease, or any interest therein, to be recognized by the Department as the lawful successor to such lease or interest, evidence of their status as such heirs or devisees must be furnished in the form of a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will, and, in all cases, the statements of the heirs or devisees that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 3382.4. In the event such heirs or devisees are unable to qualify to hold the lease or interest they will nevertheless be recognized as the lawful successors of the deceased for a period of not to exceed 2 years from the date of death of their predecessor in interest.

§ 3385.3 Separate assignments required for transfer of record title to leases.

A separate instrument of assignment must be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 3385.4 Effect of assignment of particular tract.

(a) When an assignment is made of all of the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease from the United States in his own name, and the assignment after its approval will be the basis of a new record. Royalty, minimum royalty, and rental provisions of the original lease shall apply separately to each segregated portion.

(b) In the case of an assignment of a portion of an oil and gas lease the segregated leases shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas may be produced from the original leased area in paying quantities or drilling or well reworking operations as approved by the Secretary are conducted thereon.

Subpart 3386—Termination of Leases

§ 3386.1 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the Director's office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to abandon all wells on the land to be relinquished to the satisfaction of the oil and gas supervisor.

§ 3386.2 Cancellation of leases.

Any nonproducing lease issued under the act may be canceled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations in force and effect on the date of the issuance of the lease, if such failure to comply continues for 30 days after mailing of notice by registered letter to the lease owner at his record post office address. Any such cancellation is subject to judicial review as provided in section 8(j) of the act upon the complaint of any person. Producing leases issued under the act may be canceled for such failure only by judicial proceedings in the manner prescribed in section 5(b) (2) of the act. Any lease issued under the act, whether producing or not, will be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

Subpart 3387—Mineral Deposits Affected by Section 6 of Outer Continental Shelf Lands Act

§ 3387.1 Effect of regulations on provisions of lease.

(a) As contemplated by section 6(b) of the act, the preceding regulations in this part so far as they are applicable and the following regulations will supersede the provisions of any lease which is determined to meet the requirements of section 6(a) of the act, to the extent that they cover the same subject matter, with the following exceptions: The provisions of a lease with respect to the area covered by the lease, the minerals covered by the lease, the rentals payable under the lease, the royalties payable under the lease (subject to the provisions of sections 6(a)(8) and 6(a)(9) of the act), and the term of the lease (subject to the provisions of section 6(a)(10) of the act and, as to sulphur, subject to the provisions of section 6(b)(2) of the act) shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over those regulations.

(b) A lease that meets the requirements of section 6(a) of the act shall also be subject to all operating and conservation regulations applicable to the outer Continental Shelf, as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the outer Continental Shelf, to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease. Nothing herein should be construed to waive compliance with any provision of any State lease the subject matter of which is not covered in the regulations in this part.

§ 3387.2 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the act will not preclude the issuance of other leases of the same area for deposits of other minerals: *Provided*, That no lease of minerals other than those covered by the lease shall authorize or permit the

lessee thereunder unreasonably to interfere with or endanger operations under the existing lease: *And provided further,* That no sulphur leases will be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the act.

§ 3387.3 Obligations of lessee.

§ 3387.3–1 Bonds.

Within 30 days from the effective date of the regulations in this part or within such further period or periods as may be fixed from time to time by the authorized officer, the lessee under a lease meeting the requirements of section 6(a) of the act must furnish a bond as provided in § 3384.1.

§ 3387.3–2 Wells.

(a) After due notice in writing, the lessee shall drill and produce such wells as the Secretary may reasonably require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with good operating practice.

(b) At the election of the lessee, the lessee may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the area, field, or pool in which the leased area or any part thereof is situated, which is authorized or sanctioned by applicable law or by the Secretary.

(c) The lessee shall drill and produce such wells as are necessary to protect the lessor from loss by reason of production on other properties, or in lieu thereof, with the consent of the oil and gas supervisor, to pay a sum determined by the supervisor as adequate to compensate the lessor for failure to drill and produce any such well. In the event that this lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of this lease.

§ 3387.3–3 Inspection.

The lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of the Department of the Interior, the leased area and all wells, improvements, machinery and fixtures thereon and all books, accounts, maps and records relative to operations and surveys or investigations on or with regard to the leased area or under the lease.

§ 3387.3–4 Diligence; compliance with regulations and orders.

The lessee shall exercise reasonable diligence in drilling and producing the wells herein provided for; shall carry on all operations in accordance with approved methods and practices including those provided in the operating and conservation regulations for the outer Continental Shelf; shall remove all structures when no longer required for operations under the lease to sufficient depth beneath the surface of the waters to prevent them from being a hazard to navigation and the fishing industry; and shall carry out at expense of the lessee all lawful and reasonable orders of the lessor relative to the matters in this section. On failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost: *Provided,* That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

§ 3387.3–5 Freedom of purchase.

The lessee shall accord all workmen and employees directly engaged in any of the operations under the lease complete freedom of purchase.

§ 3387.3–6 Removal of property on termination of lease.

Upon the expiration of any lease, or the earlier termination thereof as provided in the regulations in this part, the lessee shall within a period of one year thereafter remove from the premises all structures, machinery, equipment, tools, and materials other than improvements needed for producing wells or for drilling or producing other leases, and other property permitted by the lessor to be maintained.

§ 3387.4 Exploration and operations.

§ 3387.4–1 Purchase of production.

In time of war, or when the President of the United States shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in section 12(b) of the act.

§ 3387.4–2 Suspension of operations during war or national emergency.

Upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953, the Secretary is authorized to suspend any or all operations under a lease, as provided in section 12(c) of the act: *Provided,* That just compensation shall be paid by the United States to the lessee whose operations are thus suspended.

§ 3387.4–3 Restriction of exploration and operations.

The United States shall have the right, as provided in section 12(d) of the act, to restrict from exploration and operations the leased area or any part thereof which may be designated by and through the Secretary of Defense, with the approval of the President of the United States, as, or as part of, an area of the outer Continental Shelf needed for national defense. So long as such designation remains in effect no exploration or operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under any lease within any such restricted area shall be suspended, any payments of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

§ 3387.4–4 Geological and geophysical exploration; rights-of-way.

The United States reserves the right to authorize the conduct of geological and geophysical exploration in the leased area which does not interfere with or endanger actual operations under the lease and the right to grant such easements or rights-of-way, upon, through, or in the leased area as may be necessary or appropriate to the working of other lands containing the deposits described in the act, and to the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes, subject to the provisions of section 5(c) of the act where they are applicable and to all lawful and reasonable regulations and conditions prescribed by the Secretary thereunder.

§ 3387.4–5 Leases of sulphur and other mineral.

The United States reserves the right to grant sulphur leases and leases of any mineral other than oil, gas, and sulphur within the leased area or any part thereof, subject to the provisions of sections 8(c), 8(d), and 8(e) of the act and all lawful and reasonable regulations prescribed by the Secretary thereunder: *Provided,* That no such sulphur lease or lease of other mineral shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the lease which is continued under section 6 of the act.

§ 3387.5 Remedies in case of default.

(a) Whenever the lessee fails to comply with any of the provisions of the act or of the lease or of the lawful and reasonable regulations issued within 90 days after the authorized officer has determined that the lease meets the requirements of section 6(a) of the act, the lease shall be subject to cancellation as follows:

(1) If, at the time of such default, no well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or adjoining lands the lease may be cancelled by the Secretary (subject to the right of judicial review as provided in section 8(j) of the act) if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(2) If, at the time of such default, any well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or

adjoining lands, the lease may be cancelled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4(b) of the act if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(b) If any such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address, the lessor may then exercise any legal or equitable remedy which the lessor may have; however, the remedy of cancellation of the lease may be exercised only under the conditions and subject to the limitations set out in paragraph (a) of this section, or pursuant to section 8(i) of the act.

(c) A waiver of any particular default shall not prevent the cancellation of the lease or the exercise of any other remedy the lessor may have by reason of any other cause or for the same cause occurring at any other time.

§ 3387.6 Heirs and successors in interest.

Each obligation under any lease and under the regulations in this part shall extend to and be binding upon, and every benefit thereunder shall inure to, the heirs, executors, administrators, successors, or assigns of the lessee.

Group 3400—Mining Claims Under the General Mining Laws of 1872

PART 3400—MINING CLAIMS UNDER THE GENERAL MINING LAWS OF 1872; GENERAL

Subpart 3400—General Mining Laws of 1872

Sec.
3400.1 Lands subject to location and purchase.
3400.2 Minerals under the mining laws.
3400.3 Mineral locations in stock driveway withdrawals.
3400.4 Mineral locations in reclamation withdrawals.

Subpart 3401—Lands and minerals subject to location

3401.1 Manner of initiating rights under locations.
3401.2 Who may make locations.

AUTHORITY: The provisions of this Subpart 3400 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3400—General Mining Laws of 1872

§ 3400.1 Lands subject to location and purchase.

(a) Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase. The act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves in the public land states, subject to location and entry under the general mining laws in the usual manner. Lands entered or patented under the stockraising homestead law (title to minerals and the use of the surface necessary for mining purposes can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably are open to location.

(b) Mining locations may be made in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(1) The laws of the United States relating to mining claims were extended to Alaska by section 8 of the act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the act of June 6, 1900 (31 Stat. 327, 329; 48 U.S.C. 119, 120, 381–383) again, in terms, extended the mining laws of the United States and all right incident thereto, to the State, with certain further provisions with respect to the acquisition of claims thereunder.

(i) The law in respect to placer claims in Alaska was modified and amended by the act of August 1, 1912 (37 Stat. 242) and section 4 of that act was amended by the act of March 3, 1925 (43 Stat. 1118).

(ii) By the act of May 4, 1934 (43 Stat. 663; 48 U.S.C. 381a) the acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the State.

(c) Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law.

(1) The mining laws were extended to the Death Valley National Monument, California, by the act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447) with a reservation of surface rights to the United States.

(2) Mining locations may be made on lands in the Mount McKinley National Park, under the provisions of the act of February 26, 1917 (39 Stat. 938; 16 U.S.C. 347–354) which expressly provides that the United States mining laws shall be applicable to mineral lands in that area.

(3) Regulations relative to mining in the Glacier Bay National Monument are contained in Subpart 3636 of this chapter.

(4) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by Subpart 3632 of this chapter.

(5) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to Subpart 3633 of this chapter.

(d) Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation from June 18, 1943, to May 27, 1955. See Subpart 3635 of this chapter.

(e) For mining claims in national forests, see paragraph (a) of this section.

(f) Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grand Lands, located in Oregon, are subject to mining locations in accordance with provisions of Subpart 3631 of this chapter.

(g) Mining claims may be located on power site withdrawals subject to the provisions of Subpart 3530 of this chapter.

(h) Mining claims for fissionable source materials may be located on lands known to be valuable for coal under certain conditions. See Subpart 3520 of this chapter.

(i) Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679; 48 U.S.C. 364a–364e), are subject to mineral appropriation under the provision of section 3 of that act for the development of the reserved minerals under applicable laws, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. See Subpart 2241 of this chapter.

(j) Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 415g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining or mineral leasing laws for the reserved materials. See Subpart 2244 of this chapter. Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in Subpart 3220–3227.

§ 3400.2 Minerals under the mining laws.

Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the mineral leasing laws (see § 3100.0–3), and are not subject to location and purchase under the United States mining laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see Part 3610).

§ 3400.3 Mineral locations in stock driveway withdrawals.

(a) Under authority of the provisions of the act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals made before or after May 4, 1929.

(b) All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

(c) While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

(d) All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

(e) No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

(f) Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

(g) Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and conditions of the act and the regulations in this section.

(h) Every application for patent for any minerals located subject to this act must bear on its face, before being executed by the applicant and presented for filing, the following notation:

Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(i) Patents issued on such applications will contain the added condition:

That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryman under said act.

§ 3400.4 Mineral locations in reclamation withdrawals.

(a) The act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416).

(b) Application to open lands to location under the act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the land office of the district in which the lands are situated, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits. Each application shall be accompanied by a $10 nonrefundable service charge.

(c) When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

(d) If in the opinion of the Bureau of Reclamation the lands may be opened under the act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

Subpart 3401—Lands and Minerals Subject to Location

§ 3401.1 Manner of initiating rights under locations.

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim, posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

§ 3401.2 Who may make locations.

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

PART 3410—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3410—Nature and Classes of Mining Claims; General

Sec.
3410.0–6 Classes of mining claims.

Subpart 3411—Lode Claims

3411.1 Lodes located previous to May 10, 1872.
3411.2 Lodes must not have been adversely claimed.
3411.3 Length of lode claims.
3411.4 Extent of surface ground.
3411.5 Restriction on width of claims by local laws.

Subpart 3412—Describing Locations

3412.1 Defining of locations by claimants.

Subpart 3413—Discovery

3413.1 Discovery required before location.
3413.2 Discovery work.

Subpart 3414—Location

3414.1 Location notice; monumenting.
3414.2 Location notices to be recorded.

Subpart 3415—Tunnel Sites

3415.1 Possessory right of tunnel proprietor.
3415.2 Location of tunnel claims.
3415.3 Recording of notices.

Subpart 3416—Placer Claims

3416.1 Maximum allowable acreage.
3416.2 Discovery.
3416.3 Locations authorized in 10 acre units.
3416.4 Manner of describing 10 acre units.
3416.5 Conformity of placer claims to the public land surveys.
3416.6 Annual expenditures.
3416.7 Building-stone placers.
3416.8 Saline placers.
3416.9 Petroleum placers.

Subpart 3417—Millsites

3417.0–3 Authority.
3417.1 Required use.

AUTHORITY: The provisions of this Part 3410 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3410—Nature and Classes of Mining Claims; General

§ 3410.0–6 Classes of mining claims.

Mining claims are of two distinct classes: Lode claims and placers.

Subpart 3411—Lode Claims

§ 3411.1 Lodes located previous to May 10, 1872.

The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, Revised Statutes (30 U.S.C. 26, 33), by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 3411.2 Lodes must not have been adversely claimed.

It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 3411.3 Length of lode claims.

From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 3411.4 Extent of surface ground.

With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 3411.5 Restriction on width of claims by local laws.

No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

Subpart 3412—Describing Locations

§ 3412.1 Defining of locations by claimants.

Section 5 of the act of May 10, 1872, now section 2324, Revised Statutes (30 U.S.C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28) requires that all records of mining locations made subsequent to the date of said act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

Subpart 3413—Discovery

§ 3413.1 Discovery required before location.

No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 3413.2 Discovery work.

The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

Subpart 3414—Location

§ 3414.1 Location notice; monumenting.

(a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the

name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point. As to the importance of monuments, and as to their paramount authority, see the act of April 28, 1904 (33 Stat. 545; 30 U.S.C. 34), which amended section 2327 R. S.

§ 3414.2 Location notices to be recorded.

The location notice must be filed for record in all respects as required by the State or Territorial laws, and local rules and regulations, if there be any.

Subpart 3415—Tunnel Sites

§ 3415.1 Possessory right of tunnel proprietor.

The effect of section 2323, Revised Statutes (30 U.S.C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid. Section 2323 of the Revised Statutes provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

§ 3415.2 Location of tunnel claims.

To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth appplicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

§ 3415.3 Recording of notices.

A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

Subpart 3416—Placer Claims

§ 3416.1 Maximum allowable acreage.

(a) By section 2330 of the Revised Statutes (30 U.S.C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) Section 2331 of the Revised Statutes (30 U.S.C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that it, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 3416.2 Discovery.

But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 3416.3 Locations authorized in 10-acre units.

By section 2330 of the Revised Statutes (30 U.S.C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 3416.4 Manner of describing 10-acre units.

A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 3416.5 Conformity of placer claims to the public land surveys.

(a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public survey is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D. 250.)

§ 3416.6 Annual expenditures.

The annual expenditure to the amount of $100, required by section 2324, Revised Statutes (30 U.S.C. 28), must be made upon placer as well as lode locations.

§ 3416.7 Building-stone placers.

The act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

§ 3416.8 Saline placers.

(a) Under the act approved January 31, 1901 (31 Stat. 745; 30 U.S.C. 162), extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder." The saline placer act was superseded by the Mineral-Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations.

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 3416.9 Petroleum placers.

The act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder. This act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Subpart 3417—Millsites

§ 3417.0–3 Authority.

The location and patenting of lands for millsite purposes is authorized by R.S. 2337 as amended by the Act of March 18, 1960. The act, 30 U.S.C. 42, reads as follows:

Patents for nonmineral lands.

(a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21–24, 26–28, 29, 30, 33–48, 50–52, and 71–76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

(b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 18, 1960, Pub. Law 86–390, 74 Stat. 7.)

§ 3417.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

as an individual or as a member of an shall be made at the rate applicable to

PART 3420—ASSESSMENT WORK

Subpart 3420—Assessment Work; General

Sec.
3420.1 Annual assessment work.
3420.2 Inclusion of surveys in assessment work.
3420.3 Failure to perform annual assessment work.
3420.4 Determination of right of possession between rival claimants.
3420.5 Annual assessment work not required after patent certificate.
3420.6 Failure of a co-owner to contribute to annual assessment work.

Subpart 3421—Deferments

3421.0–3 Authority.
3421.1 Conditions under which deferment may be granted.
3421.2 Filing of petition for deferment, contests.
3421.3 Notice of action on petition to be recorded.
3421.4 Period for which deferment may be granted.
3421.5 When deferred assessment work is to be done.

AUTHORITY: The provisions of this Part 3420 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3420—Assessment Work; General

§ 3420.1 Annual assessment work.

In order to hold the possessory right to a lode or placer location made after May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. The period within which the work required to be done shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of each claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims may be made on any one claim. Cornering locations are held not to be contiguous.

§ 3420.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical and geophysical surveys. P.L. 85–876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28–1–2). Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

(b) As used in this section—

(1) The term "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3420.3 Failure to perform annual assessment work.

Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

§ 3420.4 Determination of right of possession between rival claimants.

The annual expenditure of $100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes (30 U.S.C. 28), is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (38 Stat. 792; 30 U.S.C. 131), under which regulations were issued March 31, 1915 (Circ. 396), 44 L.D. 46, solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

§ 3420.5 Annual assessment work not required after patent certificate.

Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

§ 3420.6 Failure of a co-owner to contribute to annual assessment work.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

Subpart 3421—Deferments

§ 3421.0–3 Authority.

The act of June 21, 1949 (63 Stat. 214; 30 U.S.C. Sup. 28b-c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 3421.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 3421.2 Filing of petition for deferment, contests.

(a) In order to obtain temporary deferment, the claimant must file with the manager of the land office for the district in which the lands are situated, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a $10 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and

give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 3421.3 Notice of action on petition to be recorded.

The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 3421.4 Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 3421.5 When deferred assessment work is to be done.

All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

PART 3430—DISPOSAL OF RESERVED MINERALS

Subpart 3430—Disposal of Reserved Minerals; General

Sec.
3430.0–1 Purpose.

Subpart 3431—Under Act of July 17, 1914

3431.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.
3431.2 Mineral subject to disposition.
3431.3 Provisions of the mineral patent.

Subpart 3432—Under Stockraising Homestead Act

3432.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.
3432.2 Mineral reservation in patent; conditions to be noted on mineral applications.

Subpart 3430—Disposal of Reserved Minerals; General

§ 3430.0–1 Purpose.

The Act of July 20, 1956 (70 Stat. 592), which amended the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

Subpart 3431—Under Act of July 17, 1914

AUTHORITY: The provisions of this Subpart 3431, issued under R.S. 2478; 43 U.S.C. 1201. Interpret or apply sec. 2, 38 Stat. 509, as amended; 30 U.S.C. 1220.

§ 3431.1 Minerals reserved by the act of July 17, 1914, subject to mineral location, entry and patenting.

The act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

> * * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however,* That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages of the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removel of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:
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> * * * * * *

§ 3431.2 Mineral subject to disposition.

The act of 1956 applies only to:

(a) Any mineral discovered and located under the United States mining laws prior to February 25, 1920, and reserved to the United States under the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), in the patent for the land and held under a valid mining location subsisting on the date that the patent application for the mining claim was filed. "Oil" reserved under the act of 1914 has been held to include oil shale. See 52 L.D. 329.

(b) Any of the other minerals within the boundaries of the mining claim reserved to the United States under the act of 1914 in the patent for the land but excepting such of those minerals as may be covered by a mineral lease or permit until such time as the rights either under the lease or permit are extinguished or terminated.

§ 3431.3 Provisions of the mineral patent.

(a) Each patent issued under the act of July 20, 1956, shall name discovered reserved mineral as well as the other minerals reserved to the United States and shall recite that in accordance with the reservation in the land patent, the mineral patentee, and its successors (or his heirs and assigns, if a person), shall have the right to prospect for, mine and remove the mineral or minerals for which the patent is issued.

(b) If, when the mineral entry is approved for patenting, there is a subsisting mineral lease or permit for any of the reserved minerals, the mineral patent shall identify the lease or permit and shall expressly except and exclude from the mineral conveyed by the patent, the mineral covered by the lease or permit, but shall provide that the exception and exclusion shall be effective only so long as any rights under either the lease or permit shall exist.

Subpart 3432—Under Stockraising Homestead Act

AUTHORITY: The provisions of this Subpart 3432 issued under sec. 11, 39 Stat. 865; 43 U.S.C. 301.

§ 3432.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 4–684 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6–13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the manager of the land office of the district wherein the land is situate, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land no objections are made by such entryman or owner of the land and filed with the manager against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said manager, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the manager, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the manager be not timely filed by the person proffering the bond, the manager will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the manager adverse to the contentions of said homestead entryman or owners of the lands, said manager may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry, unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

§ 3432.2 Mineral reservation in patent; conditions to be noted on mineral applications.

(a) There will be incorporated in patents issued on homestead entries under this act the following:

Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to the manager, the following notation:

Patents shall contain appropriate notations declaring same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

PART 3440—SURVEYS OF MINING CLAIMS

Subpart 3440—Surveys of Mining Claims; General

Sec.
3440.1 Application for survey.
3440.2 Survey must be made subsequent to recording notice of location.
3440.3 Plats and field notes of mineral surveys.

Subpart 3441—Surveys

3441.1 Particulars to be observed in mineral surveys.
3441.2 Certificate of expenditures and improvements.
3441.3 Mineral surveyor's report of expenditures and improvements.
3441.4 Supplemental proof of expenditures and improvements.
3441.5 Amended mineral surveys.

Subpart 3442—Mineral Surveyors

3442.1 Extent of duties.
3442.2 Assistants.

Subpart 3443—Contract for Surveys

3443.1 Payment.

Subpart 3444—Appointment and Employment of Mineral Surveyors

3444.1 Appointment.
3444.2 Employment.

Subpart 3445—Plats and Notices

3445.1 Payment of charges of the public survey office.

Subpart 3446—Posting

3446.1 Plat and notice to be posted on claim.
3446.2 Proof of posting on the claim.

AUTHORITY: The provisions of this Part 3440 issued under R.S. 2478; 48 U.S.C. 1201.

Subpart 3440—Surveys of Mining Claims; General

§ 3440.1 Application for survey.

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate State Director. In States for which there is no area office, applications for survey should be made to the Director of the Bureau of Land Management, Washington, D.C.

§ 3440.2 Survey must be made subsequent to recording notice of location.

The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey cannot be substituted for that required by the statute, as above indicated. All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 3440.3 Plats and field notes of mineral surveys.

When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

Subpart 3441—Surveys

§ 3441.1 Particulars to be observed in mineral surveys.

(a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the area of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 3441.2 Certificate of expenditures and improvements.

(a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the manager a certificate of the office cadastral engineer that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporation in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

§ 3441.3 Mineral surveyor's report of expenditures and improvements.

(a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

§ 3441.4 Supplemental proof of expenditures and improvements.

If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 3441.5 Amended mineral surveys.

(a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced

within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

Subpart 3442—Mineral Surveyors

§ 3442.1 Extent of duties.

The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

§ 3442.2 Assistants.

The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

Subpart 3443—Contract for Surveys

§ 3443.1 Payment.

(a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

(b) The state director has no jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i.e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

Subpart 3444—Appointment and Employment of Mineral Surveyors

§ 3444.1 Appointment.

Pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39), each state director will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the state director and shall furnish a performance bond of not less than $5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. Each state director shall maintain a register showing the names and addresses of mineral surveyors appointed for the area and eligible for the survey of mining claims. The state director shall furnish each adjoining State with a copy of such register, and shall advise them of any changes therein.

§ 3444.2 Employment.

A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

Subpart 3445—Plats and Notices

§ 3445.1 Payment of charges of the public survey office.

With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

Subpart 3446—Posting

§ 3446.1 Plat and notice to be posted on claim.

The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey.

§ 3446.2 Proof of posting on the claim.

After posting the said plat and notice upon the premises the claimant will file with the proper manager a copy of such plat and the field notes of survey of the claim, accompanied by the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said statement.

PART 3450—LODE CLAIM PATENT APPLICATION

Subpart 3450—Lode Claim Patent Application; General

Sec.
3450.1 Aplication for patent.
3450.2 Service charge.
3450.3 Evidence of title.
3450.4 Evidence relating to destroyed or lost records.
3450.5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Subpart 3451—Citizenship

3451.1 Citizenship of corporations and of associations acting through agents.
3451.2 Citizenship of individuals.
3451.3 Trustee to disclose nature of trust.

Subpart 3452—Possessory Rights

3452.1 Right by occupancy.
3452.2 Certificate of court required.
3452.3 Corroborative proof required.

Subpart 3453—Publication of Notice

3453.1 Newspaper designation.
3453.2 Contents of published notice.
3453.3 Manager to designate newspaper.
3453.4 Proof by applicant of publication and posting.
3453.5 Charges for publication.
3453.6 Payment of purchase price and statement of charges and fees.

Subpart 3455—Entry and Transfers

3455.1 Allowance of entry; transfers subsequent to application not recognized.

Subpart 3456—Diligent Prosecution

3456.1 Failure to prosecute application with diligence.

Subpart 3457—Application Processing Upon Contest or Protest

3457.1 Resumption of patent proceedings after suspension due to adverse claim or protest.

Subpart 3458—Patents for Mining Claims

3458.1 Land descriptions in patents.

AUTHORITY: The provisions of Part 3450 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3450—Lode Claim Patent Application; General

§ 3450.1 Application for patent.

(a) At the time the proof of posting is filed the claimant must file an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district or State in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

(c) In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of § 1823.4(a) and 1861.2 of this chapter.

§ 3450.2 Service charge.

The service charge payable to the Bureau of Land Management for filing and acting upon applications for mineral-land patents is $25 to be paid by the applicant for patent at the time of filing. This charge is not refundable.

§ 3450.3 Evidence of title.

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 3450.4 Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 3450.5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

Subpart 3451—Citizenship

§ 3451.1 Citizenship of corporations and of associations acting through agents.

The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application of patent.

§ 3451.2 Citizenship of individuals.

(a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

§ 3451.3 Trustee to disclose nature of trust.

Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

Subpart 3452—Possessory Rights

§ 3452.1 Right by occupancy

(a) The provisions of section 2332, Revised Statutes (30 U.S.C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has lang been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 3452.2 Certificate of court required.

There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State as aforesaid other than that which has been finally decided in favor of the claimant.

§ 3452.3 Corroborative proof required.

The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

Subpart 3453—Publication of Notice

§ 3453.1 Newspaper designation.

Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the manager will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for changes of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semiweekly or triweekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

§ 3453.2 Contents of published notice.

The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 3453.3 Manager to designate newspaper.

The manager shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 3453.4 Proof by applicant of publication and posting.

After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 3453.5 Charges for publication.

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims, Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34 T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54′ west 7285.63 feet, thence north 20° 14′ west 1500 feet to corner No. 2 of said lode; thence north 69°46′ east 569 feet to corner No. 3 of said lode; thence south 20°14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14′ east 1500 feet, to corner No. 4 of said lode; thence south 69°46′ west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence North 20°14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State.

§ 3453.6 Payment of purchase price and statement of charges and fees.

Upon the filing of the statement required by the preceding section, the manager will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional

part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the manager of the land office, and a patent shall be issued thereon if found regular.

Subpart 3455—Entry and Transfers

§ 3455.1 Allowance of entry; transfers subsequent to application not recognized.

No entry will be allowed until the manager has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

Subpart 3456—Diligent Prosecution

§ 3456.1 Failure to prosecute application with diligence.

The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

Subpart 3457—Application Processing Upon Contest or Protest

§ 3457.1 Resumption of patent proceedings after suspension due to adverse claim or protest.

The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

Subpart 3458—Patents for Mining Claims

§ 3458.1 Land descriptions in patents.

The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

PART 3460—MILLSITES, PATENTS

Subpart 3460—Millsites, Patents; General

Sec.

3460.1 Application for patent.
3460.2 Mill sites applied for in conjunction with a lode claim.
3460.3 Mill sites for quartz mills or reduction works.
3460.4 Proof of nonmineral character.

AUTHORITY: The provisions of this Part 3460 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3460—Millsites, Patents; General

§ 3460.1 Application for patent.

(a) Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims. Section 2337 of the Revised Statutes (30 U.S.C. 42) provides for the patenting of mill sites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings at to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

(c) The act of March 18, 1960 (74 Stat. 7; 43 U.S.C. 42(b)), amends R.S. 2337 to allow the holders of possessory right in a placer claim to hold nonmineral land for mining, milling, processing beneficiation, or other operations in connection with the placer claim. Applications for patent for such mill sites are subject to the same requirements as to survey and notice as one applicable to placer mining claims. No one mill site may exceed five acres and payment will be $2.50 per acre or fraction thereof.

§ 3460.2 Mill sites applied for in conjunction with a lode claim.

Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and mill site claim.

§ 3460.3 Mill sites for quartz mills or reduction works.

In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at the price named in the preceding section.

§ 3460.4 Proof of nonmineral character.

In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PART 3470—PLACER MINING CLAIM PATENT APPLICATIONS

Subpart 3470—Placer Mining Claim Patent Applications; General

Sec.

3470.1 Application for patent.
3470.2 Proof of improvements for patent.
3470.3 Data to be filed in support of application.
3470.4 Applications for placers containing known lodes.

AUTHORITY: The provisions of this Part 3470 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3470—Placer Mining Claim Patent Applications; General

§ 3470.1 Application for patent.

(a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at $2.50 per acre or fractional part of an acre.

§ 3470.2 Proof of improvements for patent.

The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 3470.3 Data to be filed in support of application.

(a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes (30 U.S.C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses. The proof showing must be made in duplicate. See 51 L.D. 265 and 52 L.D. 190.

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 3470.4 Applications for placers containing known lodes.

Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer locations are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnessess.

PART 3480—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

Subpart 3481—Adverse Claims

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Subpart 3483—Segregation

3483.1 Segregation of mineral from nonmineral land.
3483.2 Effect of decision that land is mineral.
3483.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

AUTHORITY: The provisions of this Part 3480 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3481—Adverse Claims

§ 3481.1 Filing of claim.

(a) An adverse claim must be filed with the manager of the land office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

(d) A fee of $10 is payable by an adverse claimant at the time of filing his adverse claim. This charge is not refundable.

§ 3481.2 Statement of claim.

(a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however,* That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 3481.3 Action by manager.

(a) Upon the adverse claim being filed within the 60-day period of publication, the manager will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

(b) The Act of September 21, 1961 (P.L. 87–260; 75 Stat. 541) amends the Act of June 7, 1910 (36 Stat. 459; 48 U.S.C. 386), and provides that adverse suits against mineral entries in Alaska shall be instituted within the 60-day time limit set forth in R.S. 2325 and 2326, (30 U.S.C. 29, 30). The act further provides that where a mineral patent application was filed prior to the effective date of the act, the time in which to file adverse suits is governed by the Act of June 7, 1910. Where a mineral patent application was filed prior to September 21, 1961, the entry will not be allowed until after the expiration of eight months following the publication period.

§ 3481.4 Patent proceedings stayed when adverse claim is filed; exception.

When an adverse claim is filed as aforesaid, the manager will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

§ 3481.5 Termination of adverse suit.

(a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the manager a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes (30 U.S.C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 3481.6 Certificate required when no suit commenced.

Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

Subpart 3482—Protests, Contests, Conflicts, and Segregations

§ 3482.1 Protest against mineral applications.

(a) At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29, 30). (See Turner v. Sawyer, 150 U.S. 578–586, 37 L. ed. 1189–1191.)

(b) Such protest filed by any party, other than a Federal agency, must be accompanied by a $10 nonrefundable service charge.

§ 3482.2 Procedure in contest cases.

Parts 1840 and 1850 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 3482.3 Presumption as to land returned as mineral.

Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 3482.4 Procedure to dispute record character of land.

(a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 3482.5 Testimony at hearings to determine character of lands.

(a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

Subpart 3483—Segregation

§ 3483.1 Segregation of mineral from non-mineral land.

Where a survey is necessary to set apart mineral from non-mineral land, the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States. Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

§ 3483.2 Effect of decision that land is mineral.

The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 3483.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

(a) The manager will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the manager will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

(b) The manager will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the manager of the land office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

Group 3500—Multiple Use

PART 3510—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3510—Public Law 167; Act of July 23, 1955; General

Sec.
3510.0–3 Authority.

Subpart 3511—Common Varieties

3511.1 Provisions of act.

Subpart 3512—Proceedings Under the Act

3512.1 Restriction on use of unpatented mining claims.
3512.2 Request for publication of notice to mining claimant.
3512.3 Evidence necessary to support a request for publication.
3512.4 Publication of notice.
3512.5 Contents of published notice.
3512.6 Service of notice.
3512.7 Service of copies; failure to comply.
3512.8 Proof of publication.
3512.9 Failure of claimant to file verified statement.

Subpart 3513—Hearings

3513.1 Hearing; time and place.
3513.2 Stipulation between parties.
3513.3 Hearing; procedures.
3513.4 Effect of decision affirming a mining claimant's rights.

Subpart 3514—Rights of Mining Claimants

3514.1 Recording by mining claimant of request for copy of notice.
3514.2 Waiver of rights by mining claimants.
3514.3 Protection of existing rights; exclusion of reservation in patents.

AUTHORITY: The provisions of this Part 3510 issued under sec 1, 61 Stat. 681, as amended 30 U.S.C. 601.

Subpart 3510—Public Law 167; Act of July 23, 1955; General

§ 3510.0–3 Authority.

The act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said act hereinafter more fully identified. The word "act" when used in this subpart refers to the act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947, and will be implemented by Part 3610.

Subpart 3511—Common Varieties

§ 3511.1 Provisions of act.

(a) The act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

Subpart 3512—Proceedings Under the Act

§ 3512.1 Restriction on use of unpatented mining claims.

(a) The act in section 4 provides:

Any mining claim hereafter located under the mining laws of the United States shall not to be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further,* That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severence or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the act where determination has been made pursuant to section 5 of the act, that the locator's surface rights are limited as provided in section 4 of the act, or where the owners have waived and relinquished all rights under section 6 of the act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the act. See § 3514.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the act, timber may be used by the claimants only for the purposes permitted under the act, and, except where timber is removed to provide

clearance for operations or uses permitted under the act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in Part 259 of this chapter.

§ 3512.2 Request for publication of notice to mining claimant.

(a) The act in the first paragraph of section 5(a) provides as follows:

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the land office of the Bureau of Land Management for the land district in which the lands are situated. No request for publication may include lands in more than one land district.

§ 3512.3 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in § 3512.2 as follows:

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquires were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5(a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§ 3512.4 Publication of notice.

If the request for publication and the accompanying papers conform to the requirements of the act, the Manager or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 3512.5 Contents of published notice.

Section 5(a) of the act specifies in detail what the published notice shall contain, as follows:

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims.

§ 3512.6 Service of notice.

The last paragraph of section 5(a) of the act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices,

as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 3512.7 Service of copies; failure to comply.

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3512.8 Proof of publication.

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3512.9 Failure of claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3512.4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3512.7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

Subpart 3513—Hearings

§ 3513.1 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the Examiner or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment. The Examiner shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§ 3513.2 Stipulation between parties.

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3513.3 Hearing; procedures.

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 3513.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

Subpart 3514—Rights of Mining Claimants

§ 3514.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the act provides as follows:

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (c) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3514.2 Waiver of rights by mining claimants.

Section 6 of the act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 3514.3 Protection of existing rights; exclusion of reservation in patents.

The act in section 7 provides as follows:

Nothing in this act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this act, or as a result of a waiver and relinquishment pursuant to section 6 of this act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3512.7, to file a verified statement in response to a published notice as provided in section 5(b) of the act and § 3512.9; (b) it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

PART 3520—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS VALUABLE FOR COAL

Subpart 3520—Public Law 357; Entry and Location of Source Material Upon Public Lands Valuable for Coal; General

Sec.
3520.0–1 Purpose.
3520.0–3 Authority.

Subpart 3521—Notice of Location

3521.1 Recording.
3521.2 Claimant to report annually to Mining Supervisor, Geological Survey.

Subpart 3522—Mineral Patents

3522.1 Mineral patents subject to reservations of leasable minerals.
3522.2 Mineral patents not to include lignite; exception.

Subpart 3523—Other Provision of Act

3523.1 Lodes do not include extralateral rights.
3523.2 Source material not in leasing minerals, right to remove lignite, filing of description.
3523.3 Entryman entitled to exclusive right to locate; exception.
3523.4 Holder of coal lease entitled to exclusive right to locate source material; exception.
3523.5 Definitions.
3523.6 Expiration of act; exception.

AUTHORITY: The provisions of this Part 3520 issued under R.S. 2478; as amended, sec. 8, 69 Stat. 679; 43 U.S.C. 1201, 30 U.S.C. 541 g.

Subpart 3520—Public Law 357; Entry and Location of Source Material Upon Public Lands Valuable for Coal; General

§ 3520.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 679, 30 U.S.C. 541 thru 541i), was enacted:

To provide for entry and location, on discovery of a valuable source material, upon public lands of the United States, classified as or known to be valuable for coal, and for other purposes.

The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior.

§ 3520.0–3 Authority.

The act in section 1 provides in part as follows:

That, subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, public lands of the United States classified as or known to be valuable for coal subject to disposition under the mineral leasing laws and which are open to location and entry subject to the conditions and provisions of the act of August 13, 1954 (68 Stat. 708), unless embraced within a coal prospecting permit or lease, shall also be open to location and entry under the mining laws of the United States upon the discovery of a valuable source material occurring within any seam, bed, or deposit of lignite in such lands.

Subpart 3521—Notice of Location

§ 3521.1 Recording.

(a) The act in section 1 provides in part as follows:

* * * a copy of the notice of any mining location made for source material occurring in any such bed, seam, or deposit, shall be filed for record in the land office of the Bureau of Land Management for the State in which the claim is situated within ninety days after the date of its location.

(b) The act in section 2 provides as to mining claims located prior to May 25, 1955:

That the locator or locators of such a mining claim shall, not later than one hundred and eighty days from and after the date of this Act, post on the claim and file for record in the office where the notice or certificate of location is of record, an amended notice of the mining location stating that such amended notice is filed pursuant to the provisions of this Act and for the purpose of obtaining the benefits thereof; and that a copy of said amended notice is, within the said one-hundred-and-eighty-day period, filed in the land office of the Bureau of Land Management for the State in which the mining location is situated * * *

(c) The act in section 3 provides in part as follows:

* * * upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(d) Any location notice filed under the above-quoted sections should clearly state that the claim was located for uranium or other source material contained in a bed, seam, or deposit of lignite pursuant to the act of August 11, 1955 (69 Stat. 679). The notice should

describe the lands included therein by subdivision, section, township and range, if covered by a public land survey, for a placer claim, and if unsurveyed, or if the location is a lode claim, by a metes and bounds description tied to a corner of the public land survey, or to a mineral monument.

§ 3521.2 Claimant to report annually to Mining Supervisor, Geological Survey.

(a) The act in section 1 provides in part as follows:

That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him of 10 cents per ton thereon * * * subject to the recording and payment requirements * * *

(b) Payments shall be by check, draft or money order, payable to the United States Geological Survey, accompanied by a report of the tons of lignite mined or stripped, whether disposed of or not in recovering the source material. Each report should show the name of the claim, identify the location, the calendar year for which payment is made and address of claimant.

(c) Tonnage reports and remittances for claims in Montana, North Dakota, South Dakota, and Northern Wyoming should be sent to the Regional Mining Supervisor, U.S. Geological Survey, Billings, Montana. As to claims in other states, the address of the Regional Mining Supervisor may be obtained from the Director, U.S. Geological Survey, Washington 25, D.C.

Subpart 3522—Mineral Patents

§ 3522.1 Mineral patents subject to reservation of leasable minerals.

(a) The act in section 1 provides in part as follows:

Any mineral patents issued hereunder shall be made subject to the recording and payment requirements of this section and shall contain a reservation to the United States of all Leasing Act minerals owned by the United States other than lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of such material.

(b) Under this section, all debts due the United States on account of coal mined under the location must be paid, before a patent will issue.

§ 3522.2 Mineral patents not to include lignite; exception.

(a) The act in section 1 provides in part as follows:

Mining claims located and mineral patents issued under the provisions of this Act shall not include rights to lignite not containing valuable source material except to the extent it may be necessary to mine or strip such lignite in order to mine the source material * * *

(b) The reservation of leasing act minerals including lignite that do not contain valuable source material which will be inserted in every patent issued under the act, will be subject to the right of the patentee to remove such lignite when necessary to mine source material subject to the provisions of the act.

Subpart 3523—Other Provisions of Act

§ 3523.1 Lodes do not include extralateral rights.

(a) The act in section 1 provides in part as follows:

* * * lode claims, shall not include extralateral rights.

(b) The act in section 2 provides in part as follows.

That no extralateral rights shall attach to any mining location validated under this section.

(c) The right of all locators under the act are therefore limited to the extraction of unreserved minerals within the exterior boundaries of the claim extended vertically downward.

§ 3523.2 Source material not in leasing minerals, right to remove lignite, filing of description.

(a) The act in section 3 provides in part as follows:

SEC. 3. Subject to the provisos of section 2 of this act, any mining location made under the mining laws of the United States, including the Act of August 13, 1954, on lands of the character described in section 1 of this Act, except locations made for lands within the exterior boundaries of a prior coal prospecting permit or lease, if based upon a discovery of valuable source material in deposits other than deposits of Leasing Act minerals, shall include the right to mine, remove, and dispose of lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of source material contained in lignite, subject to the reporting and payment requirements of section 1 of this Act, and subject to the provisions of the Atomic Energy Act of 1954 (68 Stat. 919), and upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(b) The act in section 3 also provides in part as follows:

That nothing in this section shall be construed to limit or restrict the rights acquired by virtue of a mining claim heretofore or hereafter located, under the 1872 mining act, as amended, or to impose any additional obligation with respect to mining and removal of source material which does not occur within any seam, bed, or deposit of lignite.

(c) Under these provisions, as to locations which were made under the act of August 13, 1954, at a time when the land was known to contain lignite and was not then in a coal permit or lease, or application for permit or lease, the locator would have a right to mine the lignite containing source material and to mine other lignite only after he had complied with the reporting and payment provisions of section 1 of the act with respect thereto. The owner of such a location, who chooses not to comply with these payment and reporting requirements, may mine and remove any mining law minerals in the location, except such minerals contained in lignite, under authority of the act of August 13, 1954. If such a locator damages or destroys any lignite in connection with his mining operations his liability therefor to the United States will be determined under applicable laws. A location made solely under the 1872 Mining Act would not be subject to the provisions of either the August 13, 1954, Act, or of this act, but unless made upon land not then known to contain lignite it would be invalid.

§ 3523.3 Entryman entitled to exclusive right to locate; exception.

(a) The act in section 4 provides as follows:

The entryman or owner of any land or the assignee of rights therein, including lands granted to States, with respect to which the coal deposits have been reserved to the United States pursuant to the provisions of of the act of March 3, 1909 (35 Stat. 844), or the act of June 22, 1910 (36 Stat. 583), excepting lands embraced within a coal prospecting permit or lease, upon the discovery of valuable source material in lignite situated within such entered, granted, or patented lands, who, except for the reservation of coal to the United States would have the right to mine and remove such source material, shall have the exclusive right to mine, remove, and dispose of lignite containing such source material and lignite necessary to be stripped or mined in the recovery of such material, subject to the reporting and payment requirements of section 1 of this act, and subject to the provisions of the Atomic Energy Act of 1954, upon filing in the land office designated in section 1 hereof, an adequate description sufficient to identify the land containing such lignite.

(b) The description under this section should be by the legal subdivision of the public land survey which contains the deposits.

§ 3523.4 Holder of coal lease entitled to exclusive right to locate source material; exception.

(a) The act in section 5 provides as follows:

The holder of coal leases issued under the provisions of the mineral leasing laws, including the Act of August 7, 1947 (61 Stat. 913), prior to the date of this Act, or thereafter if based upon a prospecting permit issued prior to that date, upon the discovery during the term of such lease of valuable source material in any bed or deposit of lignite situated within the leased lands, shall have the exclusive right to locate such source material under the provisions of this Act but the mining and disposal of such source material shall be subject to the operating provisions of the lease and to the provisions of the Atomic Energy Act of 1954: *Provided*, That the provisions of this section shall not apply to coal prospecting permits or leases on lands embraced within entered, granted, or patented lands described in section 4 of this Act.

(b) The coal lessee for lands not entered, granted or patented, who desires to obtain the benefits of this section must make a mining location and comply with the act and these regulations with respect thereto, and must also comply with the operating regulations (30 CFR Part 211).

§ 3523.5 Definitions.

(a) The act in section 6 provides in part as follows:

* * * "lignite" shall mean coal classified as ASTM designation: D 388–38, according to the standards established in the American

Society for Testing Materials on Coal and Coke under standard specifications for Classification of coals by Rank, contained in public-land deposits considered as valuable under the coal-land classification standards established by the Secretary of the Interior and prescribed in section 30, Code of Federal Regulations, part 201; and "source material" shall mean uranium, thorium, or any other material which is determined by the Atomic Energy Commission pursuant to the provisions of section 61 of the Atomic Energy Act of 1954 to be source material.

(b) The act applies only to deposits of coal coming within the definition set out in the above quotation from the act, and other types of coal deposits are not subject to location under the act, even though found to contain source material.

§ 3523.6 Expiration of act; exception.

(a) The act in section 10 provides as follows:

Twenty years after the effective date of this act, all lands subject to the provisions of section 1 shall be withdrawn from all forms of entry under this act. All claims made pursuant to the provisions of this act shall expire at that time, except for (1) claims for which patent has already been issued, and (2) claims on which application for patent has already been made and on which patent is subsequently issued: *Provided*, That, if the President shall so provide by Executive Order, the provisions of this section shall not become effective until thirty years after the effective date of this act.

(b) Under this section, no location will be recognized on and after a date 20 years after the date of the act or the expiration of any extension of such period by the President, unless prior to that date an application for a patent has been filed and no patent will issue for any such claim in the absence of evidence of full compliance with the law made prior to that date.

PART 3530—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS

Subpart 3530—Public Law 359; Mining in Powersite Withdrawals; General

Sec.
3530.0–1 Purpose.
3530.0–3 Authority: lands opened.

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Subpart 3536—Location and Assessment

3536.1 Owner of claim to file notice of location and assessment work.

Subpart 3537—Prior Existing Mining Locations

3537.1 No limitation or restriction of rights under valid claims located prior to withdrawal.
3537.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

Subpart 3538—Use

3538.1 Mining claim and millsite use.

AUTHORITY: The provisions of this Part 3530 issued under R.S. 2478, as amended, sec. 2, 69 Stat. 682; 43 U.S.C. 1201, 30 U.S.C. 1201.

Subpart 3530—Public Law 359; Mining in Powersite Withdrawals; General

§ 3530.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 681), was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "act" shall mean the act of August 11, 1955 (69 Stat. 681), cited in the act as the "Mining Claims Rights Restoration Act of 1955".

§ 3530.0–3 Authority; lands opened.

(a) The act in section 2 provides in part as follows:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes; * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The act in the second proviso thereof provides:

That locations made under the act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

Subpart 3531—Power Rights

§ 3531.1 Power rights retained in the United States.

(a) The act in the first proviso provides as follows:

That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the

United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3532—Mining Operations

§ 3532.1 Placer locator to conduct no mining operations for 60 days.

(a) The act in section 2(b) provides in part as follows:

The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 3536 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

§ 3532.2 Hearing, notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper land office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the land office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The manager shall forward a copy of each such notice that is filed to the mining locator prior to the hearing. Each party appearing at the hearing shall pay the reporter's fee covering the testimony of the party and of his witnesses and his cross-examination of any other party or witnesses.

(c) Following the hearing, the examiner will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title). Each decision by an examiner, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

Subpart 3533—Surface Protection

§ 3533.1 Bond or deposit required.

Should a limited order be issued under section 2 (b) (2) of the act, the locator is required to furnish a bond in a sum determined by the Examiner. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

§ 3533.2 Restoration of surface condition.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

Subpart 3534—Withdrawals Other Than for Powersite Purposes

§ 3534.1 Act ineffective as to other withdrawals.

(a) The act in section 2(c) provides as follows:

Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the act apply only to the extent that the lands are otherwise open to location.

Subpart 3535—Operations Risk

§ 3535.1 Prospecting and development at financial risk of party or parties doing work.

The act in section 3 provides in part as follows:

Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

§ 3535.2 United States not liable except for negligence.

The act in section 3 provides in part as follows:

Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3536—Location and Assessment

§ 3536.1 Owner of claim to file notice of location and assessment work.

(a) The act in section 4 provides as follows:

The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assesment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3530.0–3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the with-

drawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b)(1) of this section, within sixty days from the date of location shall file in the United States land office for the district in which the lands lie, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year. For identification purposes only, the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

(d) The owner of an unpatented location coming under either paragraph (b)(2) or (3) of this section, before August 11, 1956 shall have filed in the United States land office for the district in which the lands lie a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended noon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

Subpart 3537—Prior Existing Mining Locations

§ 3537.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The act in section 5 provides:

Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided*, That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraphs (c) or (d) of § 3536.1 whichever is applicable.

§ 3537.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

Subpart 3538—Use

§ 3538.1 Mining claim and millsite use.

(a) The act in section 6 provides as follows:

Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or mill site may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

PART 3540—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3540—Public Law 585, Multiple Mineral Development; General

Sec.
3540.0–1 Purpose.

Subpart 3541—Claims, Locations and Patents

3541.1 Validation of certain mining claims.
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3541.4 Reservation to United States of Leasing Act minerals.
3541.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.
3541.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

Subpart 3542—Procedure to Determine Claims

3542.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.
3542.2 Recordation of notice of application, offer, permit or lease.
3542.3 Request for publication of notice of Leasing Act filing; supporting instruments.
3542.4 Publication of request.
3542.5 Contents of published notice.
3542.6 Mailing of copies of published notice.
3542.7 Service of copies; failure to comply.
3542.8 Proof of publication.
3542.9 Failure of mining claimant to file verified statement.

Subpart 3543—Hearing

3543.1 Hearing; time and place.
3543.2 Stipulation between parties.
3543.3 Hearing; procedure.
3543.4 Effect of decision affirming a mining claimant's rights.
3543.5 Recording by mining claimant of request for copy of notice.
3543.6 Relinquishment by mining claimant of Leasing Act minerals.

Subpart 3544—Helium

3544.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

Subpart 3545—Fissionable Source Materials

3545.1 Fissionable source materials; elimination of reservation in patents, etc.
3545.2 Elimination of fissionable source materials reservations.
3545.3 Mining locations for fissionable source materials.

AUTHORITY: The provisions of this Part 3540 issued under R.S. 2478; as amended; 43 U.S.C. 1201. Interpret or apply sec. 1, 68 Stat. 708; U.S.C. 521.

Subpart 3504—Public Law 585; Multiple Mineral Development; General

§ 3540.1 Purpose.

The act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 et seq.), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "act" when used in this part, means the act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the act of August 13, 1954 (68 Stat 708).

Subpart 3541—Claims, Locations and Patents

§ 3541.1 Validation of certain mining claims.

The act in section 1(a) provides as follows:

That (a) subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however*, That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January

1, 1953, must have posted and filed for record, within the time allowed by the provisions of the act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953.] an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further,* That in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant therto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3541.2 Preference mining locations.

The act in section 3 (a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this act or which may acquire validity under the provisions of this act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3541.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the act of August 12, 1953, supra, in addition to matters required in Group 3400 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 3541.4 Reservation to United States of Leasing Act minerals.

Section 4 of the act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3541.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves; to the same extent in all respects as if such lands were not so included or covered or known.

§ 3541.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated pursuant to the act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the act.

Subpart 3542—Procedure To Determine Claims

§ 3542.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3542.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either

the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3542.3 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3542.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the appropriate land office. No Request for Publication, or publication, may include lands in more than one Land District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record.

(4) A nonrefundable $10 remittance to cover service charge.

§ 3542.4 Publication of request.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Manager, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Manager, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semi-weekly or triweekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3542.5 Contents of published notice.

The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 3542.2. Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3542.6 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3542.3.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the act (see § 3543.5);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3542.3 and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 3542.7 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3542.8 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement [7] that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3542.9 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall

be conclusively deemed, except as otherwise provided in § 3542.7.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3543—Hearing

§ 3543.1 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the Manager of the Land Office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3543.2 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3543.3 Hearing; procedure.

The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow the provisions of Appeals and Contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3543.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

§ 3543.5 Recording by mining claimant of request for copy of notice.

Section 7(d) of the act provides that:

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3543.6 Relinquishment by mining claimant of Leasing Act minerals.

Section 8 of the act provides that:

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

Subpart 3544—Helium

§ 3544.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

(a) Section 9 of the act provides that:

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL REGISTER will confer any rights on the locator or applicant.

Subpart 3545—Fissionable Source Materials

§ 3545.1 Fissionable source materials; elimination of reservation in patents, etc.

Section 10(c) of the act in its amendment of section 5(b)7 of the Atomic Energy Act of 1946 (60 Stat. 755), eliminated the requirement for a reservation of fissionable source materials in patents, conveyances, leases, permits or other authorizations as to public lands or their mineral resources granted by the United States after August 1, 1946, and provided that in cases where any patent, conveyance, lease, permit or other authorization has been issued which reserved to the United States fissonable source materials and the right to enter upon the land and prospect for, mine and remove the same, the head of the department or agency which issued the patent, conveyance, lease, permit or other authorization shall, on application of the holder thereof, issue a new or supplemental patent, conveyance, lease, permit or other authorization without such reservation. The provisions of said section 10(c) are reenacted in section 68(c) of the Atomic Energy Act of 1954 (68 Stat. 921, 934).

§ 3545.2 Elimination of fissionable source materials reservations.

(a) Any person who holds a patent, conveyance, lease, permit or other authorization issued by the Department of the Interior through the Bureau of Land Management, with a fissionable source material reservation to the United States pursuant to section 5(b)7 of the Atomic Energy Act of 1946, prior to its amendment above referred to, and who is desirous of having such reservation eliminated from the patent, conveyance, lease, permit or other authorization, must file an application therefor in the appropriate land office.

(b) Such an application must set forth the name and address of the applicant, must fully identify the instrument from which elimination of such reservation is sought, by serial number, date, name of patentee, grantee, lessee, permittee or other designated recipient of authorization, and must set forth the description of the lands to which the application relates.

(c) If the application is for a new or supplemental patent or other conveyance, the applicant must file with and in support of the application, an abstract of title certified by a duly authorized and licensed abstractor of titles, or a certificate of title certified by a duly authorized and licensed title company, certified in either instance to a date inclusive of the date of the filing of such application and showing the applicant to be the holder and owner, as to the lands covered by the original patent, or conveyance. The successor to any original lease, permit or holder of other authorization is shown by the records of the Bureau of Land Management. Any new or supplemental patent, conveyance, lease, permit or other authorization, issued pursuant to such application, will be issued in the name of the applicant.

(d) If, as to any lands covered by a patent containing a fissionable source material reservation, any rights have been granted by the United States pursuant to such reservation, then any new or supplemental patent shall be made subject to those rights, but the patentee shall be subrogated to the rights of the United States.

(e) An application for a new or supplemental lease, permit or other authorization, must be filed by the record holder and owner of such lease, permit or other authorization as shown by the records of the Bureau of Land Management.

(f) If the application (and supporting abstract of title or title certificate, where required) be found to comply with the regulations in this part, the Manager of the Land Office will:

(1) Where the application is for a new or supplemental patent or conveyance, transmit the application, including the supporting abstract or title certificate, to the Director of the Bureau of Land Management for appropriate action; or

(2) Where the application is for a new or supplemental lease, permit or other authorization, forward to the applicant a supplement to and modification of the lease or permit or other authorization setting forth that the fissionable source material reservation of the original lease, permit or other authorization is thereby eliminated from said original lease, permit or other authorization insofar as it relates to the land covered by the application. No execution by an applicant of a so-issued supplemental and modification instrument shall be required.

(g) Appropriate notation shall be made upon the records of the Land Office in which any application was filed of the issuance pursuant thereto of a new or supplemental patent, conveyance, lease, permit or other authorization.

§ 3545.3 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said act of August 13, 1954, section 10(d) of the act provides:

(d) Notwithstanding the provisions of the Atomic Energy Act, and particulary sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

Group 3600—Special Disposal Provisions

PART 3610—MINERAL MATERIALS DISPOSALS

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3612.7 Permits to governmental units.
3612.8 Permits to non-profit organizations.

AUTHORITY: The provisions of this Part 3610 issued under 61 Stat. 681, as amended, 69 Stat. 367; 30 U.S.C. 601 et seq.; 48 Stat. 1269; U.S.C. 315.

Subpart 3610—Mineral Materials Disposals; General

§ 3610.0–3 Authority.

(a) The Materials Act of July 31, 1947, amended by the acts of July 23, 1955 and September 25, 1962 (30 U.S.C. 601, 602), authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public land of the United States (including the O&C lands as described in § 5040.0–3 of this chapter), if the disposal of such materials (1) is not otherwise expressly authorized by law, including, but not limited to the act of June 28, 1934, as amended (43 U.S.C. 315), and the United States mining laws, and (2) is not expressly prohibited by the laws of the United States, and (3) would not be detrimental to the public interest. Disposals of pumicite, within certain areas of the Katmai National Monument, Alaska, may also be made under this act, however, under appropriate contract conditions for the protection of the monument. Act of April 15, 1954 (68 Stat. 53).

(b) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only, with the consent of such Federal department or agency or of such State or local governmental unit. The act provides that the Secretary of Agriculture shall dispose of materials from lands administered by him for national forest purposes or for purposes of title III of the Bankhead-Jones Farm Tenant Act of where withdrawn for any other function of the Department of Agriculture. See 36 CFR, Part 251 for Forest Service regulations relative to the disposal of materials in the national forests.

(c) Disposal of mineral materials under the act may not be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive Order for the use of Indians.

(d) The act authorizes the Secretary of the Interior in his discretion to permit free use of mineral materials by any Federal or State governmental agency unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale.

§ 3610.0–5 Definitions.

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized officer" means the Government official who has been duly authorized to sign a contract for the sale of mineral materials from public lands or to supervise operations and take action under such contract.

(d) "Mineral materials" include, but are not limited to "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials, and petrified wood.

(e) The word "act" when used in this part refers to the act of July 31, 1947, as amended.

§ 3610.1 Mineral materials disposal policy; limitations.

(a) Mineral material disposals may not be made under the act from public lands on which: (1) There are valid, existing claims to the land by reason of settlement, entry, or similar rights obtained under the public land laws; (2) there are any unpatented mining claims located either before or after July 23, 1955, which have not been cancelled by appropriate legal proceedings; (3) there are valid unpatented mining claims located on or after July 23, 1955, for valuable minerals that are not a "common variety", occurring in, or associated with "common variety" minerals.

(b) No sale of material shall be made under this part where the authorized officer determines that the aggregate damages to public lands and resources will exceed the benefits derived from such disposal. Sound conservation practices shall be exercised by all permittees or purchasers in the removal of materials under the provisions granted by this part.

(c) Mineral materials may be sold upon the request of any interested party or upon the authorized officer's own initiative.

§ 3610.2 Trespass; penalty for unauthorized removal of materials.

The extraction, severance, injury, or removal of timber or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts. See Subpart 9239 of this chapter.

Subpart 3611—Mineral Material Sales

§ 3611.1 Advertising.

(a) Material sales offered by competitive bidding shall be advertised in a newspaper of general circulation in the area where the material is located and notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks except that notice of sales amounting to $5,000 or less need be published only once.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, estimated quantities, the unit of measurement, appraised prices time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

(c) Advertisement of materials appraised at $1,000 or less may be published or posted at the discretion of the authorized officer.

§ 3611.2 Sales, appraisals, and measurements.

(a) No materials, other than that designated in the contract or permit, shall be extracted unless designated in advance and written permission given by the authorized officer and payment made therefor.

(b) All materials to be sold shall be appraised and in no case shall it be sold at less than the appraised value.

(c) Such mineral material shall be measured by volume, weight, or truck tally, or combination of these methods, or such other form of measurement as the authorized officer determines to be in the public interest.

§ 3611.3 Competitive sales.

All sales other than those specified in § 3611.4 shall be made after inviting competitive bids through publication and posting in conformance with § 3611.1. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

§ 3611.4 Negotiated sales.

(a)(1) When it is determined by the authorized officer to be in the public interest and where the sale is of property for which it is impracticable to obtain competition, he may sell at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $5,000 in value. Where it is impracticable to obtain competition and the materials are to be used in connection with the development of Federal lands under a mineral lease or leases issued by the United States, sales under this paragraph may be made in a sum not exceeding $10,000.

(2) The authorized officer may sell, at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $10,000 in value when it is in the public interest and the contract is for materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising.

(3) The total aggregate of negotiated sales which may be made in any one State to or for the benefit of any one person, partnership, association or corporation in any period of twelve consecutive months shall not exceed $10,000.

(b) Non-exclusive disposals may be made under this paragraph from the same deposit within areas designated by the State Director for this purpose. These pit sites are not to exceed 40 acres in size, except they may be enlarged as the initial 40-acre site is depleted. Such permits issued for sale or removal of material from established community pit sites will constitute a superior right to remove the material as against any subsequent claim or entry of the lands.

§ 3611.5 Qualification of bidders and purchasers.

A bidder or purchaser for the sale of mineral materials must be (a) an individual who is a citizen of the United States; (b) a partnership; (c) an unincorporated association composed wholly of such citizens; or (d) a corporation authorized to transact business in the States in which the mineral material is located. A bidder must also have submitted a deposit in advance of the sale as required by § 3611.6.

§ 3611.6 Deposits with bids.

Sealed bids must be accompanied by a deposit of not less than 10 percent of the appraised value of the mineral materials. For mineral materials offered at oral auction, bidders must make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department. Upon conclusion of the bidding the bid deposits of all bidders, except the high bidder, shall be returned. Except for corporate surety bid bonds, the deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer.

§ 3611.7 Conduct of sales.

(a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may

waive minor deficiences in the bids or the mineral material sale advertisment.

§ 3611.8—Contracts

§ 3611.8–1 Award of contract.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to preform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond, the contract may be offered and award for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided,* That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period If the successful bidder fails to comply writing within the first 30-day period. shall be forfeited as liquidated damages.

§ 3611.8–2 Contract forms.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, protection of improvements, and watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

§ 3611.8–3 Performance bonds.

(a) A performance bond of not less than 20 percent of the total contract price will be required for contracts of $2,000 or more. When the total contract price is less than $2,000, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(b) Where the materials sale contract has required a bond in connection with construction of a road, the authorized officer may, upon satisfactory completion of the road construction, reduce the amount of the performance bond by the amount of all or a portion of the estimated road construction costs: *Provided, however,* That the total amount of the performance bond shall, in no event, be reduced below 20 percent of the total contract price.

§ 3611.8–4 Payments.

(a) No part of any mineral materials sold may be removed unless advance payment has been made as provided in the contract.

(b) For sales under $2,000 the full amount shall be paid prior to or at the time the authorized officer signs the contract. For sales of $2,000 or more the authorized officer may allow payment by installments as provided below:

(1) Installment payments shall be determined by the authorized officer but in no case shall be less than 10 percent of the total purchase price. For fixed unit sales the first installment shall be paid prior to or at the time the authorized officer signs the contract. The second installment shall be paid prior to the commencement of removal operations. Remaining installments shall be due and payable without notice whenever the value of the material removed shall equal the sum of the second and subsequent installments paid by the purchaser. The total amount of the purchase price must be paid prior to 60 days before the expiration date of the contract. The purchaser shall not be entitled to a refund on a fixed unit sale even though the amount of material removed or designated for removal may be less than the estimated total volume shown in the contract.

(2) For sales of all the material within a specified area, or sales for duration of production, installment payments shall be made in the same manner as in subparagraph (1) of this paragraph, except that if it is determined after all designated materials has been removed that the total payments made under the contract exceed the total value of the material measured, such excess shall be returned to the purchaser within 60 days after such determination is made.

§ 3611.8–5 Time for removal.

Time for removing materials sold, except that sold under a duration of production contract, shall not exceed a period of two years except that such time for removal may be extended as provided in § 3611.8–6.

§ 3611.8–6 Extension of time.

If the purchaser shows that his delay in removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than 30 days prior to the expiration date of the time for removal but not earlier than 90 days prior thereto. Additional extensions may be granted if the purchaser submits the same type of written request not later than 30 days prior to the expiration date of an extension but not earlier than 90 days prior thereto. No extension may be granted without reappraisal as provided in § 3611.8–7.

§ 3611.8–7 Reappraisals.

If an extension is granted as provided in § 3611.8–6 mineral materials remaining on the contract area, title to which has not passed to the purchaser, shall be reappraised by the authorized officer. Such reappraised prices shall become the new unit prices for the purpose of computing the reappraised total purchase price except that the new unit prices shall not be less than the unit prices that were in effect during the original time for removal or previous extension.

§ 3611.9 Assignments.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the mineral material is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 3611.8–3 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

Subpart 3612—Free Use

§ 3612.1 Application for permit.

An application for permit, in duplicate, must be made on Bureau approved forms and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit.

§ 3612.2 Conservation practices.

All mineral materials disposed of under free-use shall be extracted or removed in accordance with approved conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources.

§ 3612.3 Issuance and cancellation of free-use permit; removal of materials; bond.

(a) A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of the mineral materials. Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the mineral materials to meet his needs. The material applied for must be for the applicant's own use and may not be bartered or sold. No mineral materials shall be removed until the permit is issued.

(b) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or if the permit has been issued erroneously.

(c) A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(d) A free-use permit issued under this part may not be assigned.

§ 3612.4 Duration, extension, and termination of permit.

Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the authorized officer, such extension not to exceed one year. However, the authorized officer may grant permits to any Federal, State, or Territorial agency, unit, or subdivision, including municipalities, for such periods as he may deem appropriate, not to exceed 10 years. The permittee must notify the officer in charge upon completion of removal.

§ 3612.5 Removal by agent.

A free-use permittee may procure the mineral materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and, no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

§ 3612.6 Removal of improvements.

Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property and any improvements he has placed on the land, except roads, culverts and bridges are to be left in place, in good condition and will become the property of the United States upon expiration of the 90-day removal period.

§ 3612.7 Permits to governmental units.

A free-use permit may be issued to any Federal or State agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that the applicant makes a satisfactory showing to the authorized officer that such materials will be used for a public project. Such permits will constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

§ 3612.8 Permits to non-profit organizations.

A free-use permit issued to a non-profit association or corporation may not provide for the disposition of mineral materials having an in-place value in excess of $100 during any one calendar year. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same mineral material by purchase. However, the mineral materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, mining location or similar rights obtained under the public land laws.

PART 3630—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3631—O & C Lands

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- 3631.1 General provisions.
- 3631.2 Requirements for filing notices of locations of claims; descriptions.
- 3631.3 Requirement for filing statements of assessment work.
- 3631.4 Restriction on use of timber; application for such use.
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Subpart 3632—Olympic National Park, Washington

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- 3632.1 Mining locations during 5-year period.
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Subpart 3633—Organ Pipe Cactus National Monument, Arizona

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- 3633.1 Mining locations.
- 3633.2 Occupation and use of surface.
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- 3633.4 Title to minerals only.
- 3633.5 Destroying vegetation prohibited.
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Subpart 3634—City of Prescott Watershed, Arizona

- 3634.1 Minerals in city of Prescott watershed in Arizona.

Subpart 3635—Papago Indian Reservation

- 3635.0–3 Mineral locations in Papago Indian Reservations, in Arizona.

Subpart 3636—Glacier Bay National Monument

- 3636.1 Mineral deposits in the Glacier Bay National Monument.

Subpart 3637—Lands Patented Under the Alaska Public Sale Act

- 3637.1 Subject to mining location.
- 3637.2 Compensation to surface rights holder.

Subpart 3631—O. & C. Lands

AUTHORITY: The provisions of this Subpart 3631 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3631.1 General provisions.

(a) The act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937, to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 3631.2 Requirements for filing notices of locations of claims; descriptions.

(a) Where prior to April 8, 1948, a mining claim has been located upon O. and C. lands, the owner thereof must file for record, not later than October 5, 1948, in the land office of the land district in which the claim is situated, a copy of the notice of location of the claim. With respect to all mining claims located on O. and C. lands on or after April 8, 1948, the owner thereof must file for record, within 60 days of the date of such mining location, in the appropriate land office, a copy of the notice of location of the claim.

(b) If the location affects surveyed lands and the copy of location notice does not describe those legal subdivisions, section, township and range partly or wholly covered by the mining claim, the copy must be accompanied by a statement of the owner of the claim describing the legal subdivisions affected.

(c) If the location affects unsurveyed lands and the copy of location notice does not show the land described therein connected by course and distance to the nearest corner of the public land surveys and does not give the probable legal subdivisions affected if the lands were surveyed, the copy must be accompanied by a statement of the owner of the claim giving that information or satisfactory reasons for not doing so.

(d) The name and address of each owner of the claim should be furnished with the other data required by this section.

§ 3631.3 Requirement for filing statements of assessment work.

The owner of any unpatented mining claim located upon O. and C. lands must also file for record in the land office in which the claim is situated, within 60 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or, as to compliance in lieu thereof, with any applicable relief act.

§ 3631.4 Restriction on use of timber; application for such use.

The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 3631.5 Applications for final certificates and patents.

Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the act.

Subpart 3632—Olympic National Park, Washington

AUTHORITY: The provisions of this Subpart 3632 issued under sec. 2, 52 Stat. 1242; 16 U.S.C. 252.

§ 3632.0–3 Authority.

(a) By the act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U.S.C. 251–255), the Mount Olympus National Monument was abolished and certain described lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the act provides:

That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Willamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3632.1 Mining locations during 5-year period.

Under the provisions of section 2 of the act the lands within the area described in that section are, for a period of 5-years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act, but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and the regulations in this subpart.

§ 3632.2 Cutting of timber.

The locator of a mining claim within the area described in section 2 of the act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 3632.3 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 3632.4 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by section 2 of the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or minerial springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

§ 3632.5 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the act will terminate when the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 3632.6 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under section 2 of the act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals under the act and this subpart.

Subpart 3633—Organ Pipe Cactus National Monument, Arizona

AUTHORITY: The provisions of this Subpart 3633 issued under 55 Stat. 745; 16 U.S.C. 450z.

§ 3633.0–3 Authority.

By the act of Congress approved October 27, 1941 (55 Stat. 745; 16 U.S.C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3633.1 Mining locations.

The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral

subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.

§ 3633.2 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 3633.3 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 3633.4 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Organ Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 3633.5 Destroying vegetation prohibited.

The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 3633.6 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 3633.7 Lands containing certain features not subject to location.

Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

Subpart 3634—City of Prescott Watershed, Arizona

§ 3634.1 Minerals in city of Prescott watershed in Arizona.

(a) The act of January 19, 1933 (47 Stat. 771; 16 U.S.C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The manager will note on the face of all applications for patent for mining claims embracing any of the described lands that the same are subject to the conditions, provisions, limitations, and reservations of the act except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the act (47 Stat. 771; 16 U.S.C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws and secure patent which will convey to him the surface as well as the minerals in the claim.

(R.S. 2478; 43 U.S.C. 1201)

Subpart 3635—Papago Indian Reservation

§ 3635.0–3 Mineral locations in Papago Indian Reservation, in Arizona.

(a) The act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U.S.C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements hereinafter prescribed.

(c) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(d) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(e) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(f) The act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow

the general procedure in applications for repayment.

(g) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of the said act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(h) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(i) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

(R.S. 2478; 43 U.S.C. 2101)

Subpart 3636—Glacier Bay National Monument

§ 3636.1 Mineral deposits in the Glacier Bay National Monument.

(a) Under the act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining location may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surface of an unpatented mining claim is restricted by the general law to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wild life provide:

The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.

Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the act of June 22, 1936, will terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

(R.S. 2478; 43 U.S.C. 1201)

Subpart 3637—Lands Patented Under the Alaska Public Sale Act

§ 3637.1 Subject to mining location.

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U.S.C. 364a–364e) are subject to mining location, under the provision of section 3 of that act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Group 3400 and to the additional conditions and requirements in § 2241.5–2 of this chapter.

(63 Stat. 679, 48 U.S.C. 364a–364e)

§ 3637.2 Compensation to surface rights holder.

Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

(Sec. 5, 63 Stat. 679; 48 U.S.C. 364e)

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

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4114.3–1 Membership and meetings.
4114.3–2 Functions and duties.
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4114.4–1 Organization.
4114.4–2 Articles of incorporation; constitutions; by-laws.
4114.4–3 Powers.
4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Subpart 4115—Records and Administrative Procedures

4115.2 Procedures.
4115.2–1 License and permit procedures, requirements and conditions.
4115.2–2 Transfers and relinquishments.
4115.2–3 Appeals and hearings.
4115.2–4 Special rules for grazing districts.
4115.2–5 Range improvements and contributions.
4115.2–6 Pledge of licenses and permits as security for loans.

AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promtoe the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k) (1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not

be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land § 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(c) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under paragraphs (a) or (b) of this section.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will

classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–2 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–1 Increase.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–2 Reduction.

(a) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they are in excess of the base property qualifications or having been otherwise improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Such reductions may be made either by reducing the number of livestock or the time on the Federal range

involved, or by both methods, as determined by the District Manager after recommendation by the advisory board.

(c) When the District Manager, after recommendation by the advisory board, determines that the imposition of the full amount of certain reductions in grazing privileges from current licensed or permitted use necessary to reach the grazing capacity of a range area would impose a serious hardship on the range users, he is not required to impose the full amount of the reduction forthwith, but will then schedule a percentage of the required reduction during each of the three years immediately following the determination as the circumstances of each case may warrant, except when the total reduction is less than fifteen percent it may not be so scheduled but will be imposed forthwith in the full amount.

(d) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make a reduction in grazing privileges to reach the grazing capacity of any Federal range area and of the manner in which the reduction is to be made. The District Manager's decision notice will allow thirty days from receipt thereof in which to file any desired appeal in accordance with § 4115.2–3. If no appeal is filed within the thirty-day period, the reduction will be made in accordance with the District Manager's decision, and no further appeal will be allowed even though the reduction may be scheduled under paragraph (c) of this section to cover a period of time up to three years. If any timely appeal is filed after receipt of the District Manager's decision notice, the reduction for the entire Federal range area under consideration will be deferred pending the completion of the appeal and hearing procedure. Any reduction provided by the ultimate decision will be applied to its full extent immediately after the effective date of that decision. If, however, the final decision on appeal is rendered within the three-year reduction period established by the decision notice of the District Manager, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of § 4115.2–3(i)(2).

(e) When the District Manager determines that the potential grazing capacity, with improvements, of a Federal range area is significantly greater than the present grazing capacity, he may, after obtaining advice from the advisory board, issue a current license for active use not to exceed the animal unit months of forage presently available, and issue a non-use license for the difference between the use allowable by the limits of the present grazing capacity and the potential. This difference will be held in a suspense status as reflected in the non-use portion of the license, provided that the aggregate of active and non-use privileges shall not exceed the extent of the base property qualifications of the licensee or permittee. Thereafter, when the District Manager determines that a significant portion of the potential grazing capacity has been attained, he may increase the active authorized use under the license or permit to that extent.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with subpart 2412 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be elected for appoint-

ment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Director. The State Director may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the District.

§ 4114.1–2 Election; time and place; the general procedures.

All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Thereafter elections shall be held annually by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

Upon receipt of the judges' certificate of returns after conclusion of the election procedure the district manager shall notify the State Director of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. Such person shall serve for the fiscal year for which he has been elected. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the district manager, shall be transmitted to the State Director for consideration. A person appointed to fill a vacancy shall hold office for the remainder of the unexpired term. The wildlife representative will be appointed by the State Director for a term of office that does not exceed a fiscal year.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecing nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may

determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The cochairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licenses and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the District Manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficent, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager.

If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3(a).

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (e).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under § 4111.4–2 (a)(3), (c), and (e).

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13)(i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any

benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange of use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(c) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made. A permit may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance,

the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Subpart 4121—Grazing Leases (O&C and CBWR)

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Sec.

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AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4121—Grazing Leases (O&C and CBWR)

§ 4121.0–1 Purpose.

Since the statutory authority for grazing on the O. and C. lands subordinates such use to the primary purposes of the act, namely, to provide a permanent source of timber supply by managing the lands in conformity with the sustained-yield principle, protect water sheds, regulate streamflow, and contribute to the economic stability of local communities and industries, no lease will be issued unless the authorized officer of the Bureau of Land Management, who is charged with the administration of grazing on such lands, determines that grazing on the lands to be included in the lease will not interefere with the production of timber, or any of the other purposes of the act.

§ 4121.0–3 Authority.

Section 4 of the act of August 28, 1937 (50 Stat. 875) authorizes the Secretary of the Interior in his discretion to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereinafter referred to as O. and C. lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands. Grazing leases for other public lands intermingled with the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant lands which are located west of the Cascade Mountain Range Divide, or in and west of Range 5 East, or west of Klamath Lakes and Link River in Ts. 36 to 41 S., Rs. 6 to 9 E., inclusive, Willamette Meridian, Oregon, will be issued pursuant to and will be governed by the provisions of this Subpart 4121.

§ 4121.1 Grazing of livestock kept for domestic use.

Bona fide settlers or prospectors may apply to the authorized officer for permission to graze without charge not more than a total of 10 head of milk and work stock on the O. and C. lands, or such lands and intermingled public domain lands. Such permission may be granted by the authorized officer, in his discretion, upon such conditions as he may prescribe.

§ 4121.2 Crossing permits.

The authorized officer may permit the transit of stock on established stock driveways or thoroughfares on O. and C. lands, or such lands and intermingled public domain lands, free of charge. Under such conditions and restrictions as are necessary, the authorized officer may also grant permission to cross allotments of other lessees, areas closed to grazing, or unleased lands, and such permission must be obtained before such crossing occurs. The permittee shall be liable for any damage caused to the range.

§ 4121.3 Application and lease.

(a) An application for a grazing lease shall be made on a form approved by the Director in the manner set forth in §§ 4122.2–1 and 4122.2–2. An application may include O. and C. lands or public lands or both. Leases shall be issued in the manner set forth in § 4122.3, and the lease rental shall be computed in accordance with § 4121.4.

(b) All applications, including applications arising out of the assignment of leased lands, where the application in whole or in part embraces lands that were not under lease to the applicant therefor on the date of filing such application, must be accompanied by an application service fee of $10 which will not be returnable.

§ 4121.4 Rental.

(a) The lessee shall pay in accordance with the terms of the lease, an annual rental computed in conformity with the following rate tabulations. However, when warranted by circumstances, including changed marketing conditions, the authorized officer may establish any other appropriate schedule of rental rates for leases issued under this subpart 4121.

Estimated grazing capacity in acres per A.U.M.	Estimated grazing capacity in animal units year-long per section	Yearly lease rate per acre
107.00	0.6	$0.005
53.00	1.0	.010
38.00	1.5	.013
25.00	2.0	.020
20.00	2.5	.025
18.00	3.0	.028
16.00	3.5	.031
14.00	4.0	.036
12.00	4.5	.042
11.00	5.0	.045
10.00	6.0	.05
7.50	7.0	.067
6.50	8.0	.077
6.00	9.0	.083
5.50	10.0	.091
5.00	11.0	.10
4.50	12.0	.11
4.00	13.0	.125
3 75	14.0	.13
3.50	15.0	.14
3.25	16.0	.15
3.00	17.0	.17
2.75	19.0	.18
2.50	21.0	.20
2.25	24.0	.22
2.00	27.0	.25
1.75	30.0	.29
1.50	36.0	.33
1.25	43.0	.40
1.00	53.0	.50
0.50	107.0	1.00
0.25	213.0	2.00

(b) One cow or one horse or five sheep or five goats constitute one animal unit. The minimum rental charge shall be fixed at not less than $1.00 per annum. The rental may be adjusted to reflect differences in numbers of livestock authorized to be grazed, changes in carrying capacity, and changes in authorized rates of rental at the end of the third year of the lease, and at the end of each subsequent three-year period.

§ 4121.5 Timber and other uses of land.

A lease issued for grazing purposes will not entitle the lessee to cut and remove timber from the land, or to take any other asset therefrom, or to use such land for purposes other than grazing. In order to obtain such rights or privileges, the lessee must make application therefor in accordance with the governing laws and regulations.

§ 4121.6 Governing regulations; applications and leases subject to regulations.

Applications filed and leases issued under this subpart 4121, shall be subject to the regulations therein, as well as to

the regulations contained in subpart 4122 relating to grazing leases issued pursuant to section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended (43 U.S.C. sec. 315m), to the extent that the latter are not inconsistent with the former. The leases will also be subject to the standard terms and conditions set forth therein, and to any other terms and conditions which, in his discretion, the authorized officer may require.

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

§ 4122.0–3 Authority.

Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only.

§ 4122.0–5 Definitions.

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D.C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 4122.1 Conditions.

§ 4122.1–1 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided,* That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 4122.1–2 Classes of applicants; preference rights.

The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[1]

[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 4122.2 Application for lease.

§ 4122.2–1 Applications.

An application for lease shall be executed in triplicate on a form approved by the Director and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.

§ 4122.2–2 Filing fee.

A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

§ 4122.2–3 No right conferred by application prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 4122.2–4 Action on defective application or where the lands applied for are not subject to grazing leasing.

Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

§ 4122.2–5 Conflicting applications.

In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands. After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 4122.2–6 Protests.

Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 4122.3 Leases.

§ 4122.3–1 Issuance of leases.

(a) *Conditions.* The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

(b) *Term.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

(c) *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on a form approved by the Director at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

(d) *Requirements and stipulations.* The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(e) *Subleases.* No part of the leased lands may be subleased.

§ 4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.

(a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with § 2321.3 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on a form approved by the Director (see § 4122.2–1) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

§ 4122.3–3 Rentals, schedule of grazing fees; billing notices; effect of failure to pay.

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5. Rental charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice.

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice whichever is the later, then the lease shall be considered as cancelled and all rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

§ 4122.3–4 Assignment of lease.

The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form as approved by the Director, properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.

(a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lien or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be

[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

§ 4122.4 Construction, maintenance, and removal of improvements.

§ 4122.4–1 Permit required.

After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

§ 4122.4–2 Applications for permits and cooperative agreements.

Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on a form approved by the Director and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on a form approved by the Director.

§ 4122.4–3 Action on the application.

Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 4122.4–4 Removal of improvements.

(a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 4122.4–2. The amount of such compensation shall be determined in accordance with the procedure set forth in § 4122.3–5. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 4122.5 Supervision and management of leased lands.

§ 4122.5–1 Access.

The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

§ 4122.5–2 Inspection of leased premises.

The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 4122.5–3 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.

The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 4122.5–4 Temporary closing of leased area.

The State Director, in his discretion, may close temporarily to grazing, portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 4122.5–5 Crossing permits.

Upon application filed with the authorized officer by any person showing the necessity for crossing the Federal land with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

§ 4122.5–6 Trespass.

Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this Part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. (See § 9239.3–1 of this chapter for detailed trespass regulations.)

§ 4122.6 Cancellation.

Except as otherwise provided in § 4122.3–3, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement on a form approved by the Director entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

§ 4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on a form approved by the Director. When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on a form approved by the Director to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

§ 4122.8 Appeals; filing.

An appeal from any decision rendered pursuant to §§ 4122.0 to 4122.8, inclusive, may be taken to the Director and the Secretary, in accordance with appeals and contests (Parts 1840 and 1850 of this chapter). The appeal should be filed with the officer who rendered the decision.

PART 4130—GRAZING ADMINISTRATION (ALASKA)

Subpart 4131—Grazing Leases

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Subpart 4132—Grazing Permits (Reindeer)

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4132.4 Trespass.

AUTHORITY: The provisions of this Part 4130 issued under sec. 15, 44 Stat. 1455, as amended; 48 U.S.C. 471n.

Subpart 4131—Grazing Leases

§ 4131.0–2 Objectives.

The beneficial utilization of the public lands in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to their use for agriculture, to the protection, development and utilization of their forests, and to the protection, development and utilization of such other resources as may be of greater benefit to the public.

§ 4131.0–3 Authority.

The act of March 4, 1927 (44 Stat. 1452; 48 U.S.C. 471, 471a–471o) authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 7 of the act provides that all leases shall be made for a term of 20 years, except where the Secretary of the Interior determines that the land may be required for other than grazing purposes within the period of 10 years, or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.

§ 4131.0–5 Definitions.

As used in this subpart:

(a) "Secretary" means Secretary of the Interior;

(b) "Director" means Director, Bureau of Land Management;

(c) "Authorized officer" or "manager" means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;

(d) "The act" means the act of March 4, 1927 (44 Stat. 1452, 48 U.S.C. secs. 471, 471a–471o);

(e) "Person" means individual, partnership, corporation or association;

(f) "Native" means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;

(g) "District" means any grazing district established under the act.

(h) "Animal unit month" means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for one month. For the purpose of this definition, one cow shall be considered the equivalent of one horse, or five sheep or five goats.

§ 4131.1 Conditions.

§ 4131.1–1 Grazing districts.

(a) *Establishment.* Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be co-extensive with the boundaries of the public land districts in Alaska.

(b) *Leases on acreage basis.* Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

§ 4131.1–2 Lands subject to lease.

Vacant, unreserved, and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 4131.0–3 public lands within the boundaries of a grazing district which have been withdrawn for any purpose may be leased with the prior consent of the Department or agency having administrative jurisdiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

§ 4131.1–3 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or

(c) Is a group, association, or corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

§ 4131.1–4 No right acquired by applicant prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease, or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.[3]

§ 4131.2 Procedures.

§ 4131.2–1 Applicants.

(a) *Classes of applicants and preference.* Applicants for grazing leases shall be given preference in the following order:

(1) Natives.
(2) Bona fide settlers.
(3) Other qualified applicants.

(b) *Assertion of preference rights.* Any person claiming a preference right to a lease under paragraph (a) of this section must furnish with the application required under § 4131.2–2(a) a statement setting forth the facts on which such claim is made.

§ 4131.2–2 Application for lease.

(a) *Form used.* An appliaction for grazing lease must be executed in duplicate on a form approved by the Director, and filed with the manager.

[3] It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who wilfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than $500. (Sec. 12, act of March 4, 1927; 48 U.S.C. 471k, and notice approved March 7, 1929.)

(b) *Schedule of operations.* The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

(c) *Financial responsibility.* The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

§ 4131.2–3 Maximum number of stock.

The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

§ 4131.2–4 Annual rental.

(a) *Amount.* Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

(b) *Adjustment or waiver.* The manager, if he determines such action to be in the public interest by reason of (1) depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid and the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice, whichever is the later, the lease shall be considered canceled and all rights terminated thereunder as of the end of such current lease period.

§ 4131.2–5 Reduction in excessive leased area.

Whenever, in the opinion of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

§ 4131.2–6 Free grazing permits.

Any person may file application in duplicate on a form approved by the Director, for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than one year.

§ 4131.2–7 Leases.

(a) *Issuance of lease.* If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on a form approved by the Director, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that portion of

the year subsequent to the lease issuance.

(b) *Report of grazing operations.* Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on a form approved by the Director, of his grazing operations during the preceeding year.

(c) *Assignments.* No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on a form approved by the Director and must be accompanied by the application on a form approved by the Director, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

(d) *Renewals.* An application for renewal of a grazing lease should be executed and filed in duplicate on a form approved by the Director not less than four months but not more than eight months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

(e) *Rights reserved.* Grazing leases under this Subpart 4131 shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources on or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(f) *Restrictions.* No lessee may so enclose roads, trails or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing or trapping on the land, or the ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(g) *Termination.* A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(h) *Cancellation.* A lease may be cancelled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of this Subpart 4131. No lease will be cancelled for default in complying with the provisions of the lease or of this Subpart 4131 until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be cancelled.

§ 4131.2–8 Stock driveways; crossing permits; quarantine regulations.

(a) *Stock driveways.* The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) *Crossing permits.* A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on a form approved by the Director, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

(c) *Quarantine regulations.* Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

§ 4131.2–9 Range improvements.

(a) *Permits for construction and maintenance.* Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on a form approved by the Director. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes. The lessee, upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on a form approved by the Director.

(b) *Removal of improvements and personal property.* (1) Improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(2) If all moneys due have been paid and the lessee, on or before the termination of his lease in whole or in part for any reason, notifies the manager of his determination to leave on the land involved in such termination improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, lease or entry under any public land law, the land on which such improvements are located, until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(3) In the absence of a notice by the lessee in accordance with subparagraph (2) of this paragraph the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

§ 4131.3 Disposition of leased lands.

§ 4131.3–1 Settlement, location, and acquisition.

Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands (see § 4131.2–7(e)) and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

§ 4131.3–2 Mineral prospecting, location and purchase.

Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining

laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4131.5 Protests, hearings and appeals.

§ 4131.5–1 Protests.

Protests against an application for a lease should be filed in duplicate, with the manager, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest; and should be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protests is filed, the protest should be accompanied by an application for a grazing lease.

§ 4131.5–2 Hearings; appeals.

(a) Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an examiner shall be governed by Subpart 1852 of this chapter pertaining to contests.

(b) An appeal may be taken from any decision of the authorized officer to the Director of the Bureau of Land Management, and from any decision of the Director to the Secretary of the Interior, pursuant to Part 1840 of this chapter.

Subpart 4132—Grazing Permits (Reindeer)

§ 4132.0–3 Authority.

Section 12 of the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250k), authorizes the Secretary of the Interior to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of 48 U.S.C. 250–250n.

§ 4132.0–5 Definitions.

(a) "Reindeer" includes reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds and the increase thereof.

(b) "Natives" include the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

(c) "Bureau" means Bureau of Land Management.

(d) "Director" means Director, Bureau of Land Management.

(e) "Authorized Officer" means the Bureau official who has been authorized to issue a reindeer grazing permit.

(f) "The Act" means the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250, 250a–250p).

§ 4132.1 Conditions.

§ 4132.1–1 Lands subject to grazing permit.

Vacant and unreserved and unappropriated public lands are subject to inclusion in a reindeer grazing permit. Where these lands are within the natural migration routes of caribou, or when they have other important wildlife values, the lands may be included in a permit, at the discretion of the authorized officer after consultation with the Bureau of Sport Fisheries and Wildlife, subject to such special terms and conditions as may be jointly agreed upon. Public lands which have been withdrawn for any purpose may also be included in a grazing permit with the prior consent of the Department or agency having administrative jurisdiction thereof, and subject to such additional terms and conditions as such Department or agency may impose.

§ 4132.1–2 Qualifications of applicants.

An applicant is qualified if he is a native or group, association or corporation of natives as defined by the Act of September 1, 1937, organized under the laws of the United States or the State of Alaska.

§ 4132.1–3 No rights acquired by applicant prior to issuance of grazing permit.

The filing of an application will not segregate the land applied for from application by other persons for a grazing permit, or from other disposition under the public land laws. As the issuance of a grazing permit is discretionary, the filing of an application will not create a right for such a permit, or to the use of the lands applied for pending the issuance of a grazing permit.

§ 4132.1–4 Rights reserved; public land laws applicable.

(a) Grazing permits under this Subpart 4132 shall be subordinated to higher uses and subject to modification or reduction by the authorized officer to the extent necessary to allow:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water and other resources on or in the lands included in the grazing permit, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses pursuant to applicable public land laws.

(3) The temporary closing of portions of the permitted area to grazing whenever, because of improper handling of the reindeer, overgrazing, fire, or other cause, such action is deemed necessary to restore the range to its normal condition.

(b) No permittee may so enclose roads, trails, or highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the permitted area; he shall not prevent legal hunting, fishing or trapping on the land, or ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(c) Persons using public lands for grazing of reindeer or for driving of reindeer across such lands must comply with applicable State and Federal laws relative to livestock quarantine and sanitation.

§ 4132.1–5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

(a) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the non-mineral public land laws applicable to the State of Alaska.

(b) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(c) Unless otherwise withdrawn therefrom lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4132.2 Procedures.

§ 4132.2–1 Application for grazing permit.

(a) *Form used.* An application for a grazing permit must be executed in duplicate on a form approved by the Director and filed in the Bureau office which has jurisdiction over lands applied for.

(b) *Bureau of Indian Affairs certification.* A certification of reindeer allotment to the applicant, signed by the authorized Bureau of Indian Affairs officer, must accompany the application if the applicant is to receive a herd from the Government.

(c) *Source of reindeer other than Government.* If reindeer are to be obtained from a source other than the Government, the applicant should state the source and show evidence of his purchase or option to purchase.

(d) *Listing of improvements.* With the initial application for any grazing permit issued under this subpart 4132, the applicant must list by location and description the improvements found in the area under application which are owned by the applicant. Such statement of ownership will be verified by a Bureau of Indian Affairs official prior to submitting it to the Bureau of Land Management. Such existing improvements will be permitted by the terms of the initial grazing permit. Improvements to be constructed subsequent to the issuance of the initial grazing permit must be under permit in accordance with § 4132.2–9.

§ 4132.2–2. Filing fee; grazing fee.

A filing fee of $10 must accompany each application for a reindeer grazing permit or application for renewal thereof. No grazing fee will be charged.

§ 4132.2–3 Term of grazing permit; renewals.

(a) Reindeer grazing permits shall be issued for a maximum term of 10 years, except where the applicant desires a

shorter term, or where the authorized officer determines that a shorter period will be in the public interest.

(b) Application for renewal of a grazing permit shall be made not less than four months or more than eight months before the expiration date of the permit. The authorized officer may at his discretion offer the permittee a renewed grazing permit containing such terms, conditions, and of such duration as he determines to be in the public interest.

§ 4132.2–4 Area of use and maximum number of reindeer.

(a) Permits will restrict grazing use to a definitely described area. Grazing permits will be granted only for such areas as may be deemed adequate and usable according to the needs of the permittee.

(b) The grazing permit will indicate the maximum number of reindeer which may be grazed on the permitted area, based on range conditions, and will be subject to adjustment as the condition of the range indicates.

§ 4132.2–5 Adjustment of grazing permit area.

The permitted area may be reduced at any time, after not less than 30 days notice to the permittee, when in the opinion of the authorized officer the area is excessive for the number of reindeer grazed thereon. The permit may be increased by the authorized officer on his own motion or upon request of the permittee, when in the opinion of the authorized officer the area is insufficient for the number of reindeer grazed thereon. The permittee shall have opportunity within such notice period to show cause why the area included in the grazing permit should not be adjusted.

§ 4132.2–6 Report of grazing operations; assignments allowed.

(a) Before April 1 of the second permit year and each year thereafter, the permittee shall file with the authorized officer a report in duplicate of his grazing operations during the preceding year on an approved form.

(b) No part of the land included in the permit may be subleased. Proposed assignments of a permit, in whole or in part, must be filed in duplicate with the authorized officer within 90 days from the date of its execution. Such assignments must contain all of the terms and conditions agreed upon by the parties thereto, accompanied by the same showing by the assignee as to qualifications and a reindeer allotment as is required of applicants for a permit, and by the assignee's statement agreeing to be bound by the provisions of the permit. No assignment shall be effective until approved by the authorized officer.

§ 4132.2–7 Termination of grazing permit; cancellation.

(a) A grazing permit may be surrendered by the permittee upon prior written notice filed with the authorized officer, effective upon the date indicated in such notice, but not less than 30 days from the date of filing.

(b) A grazing permit may be cancelled by the authorized officer if the permit was issued improperly through error with respect to a material fact or facts, or if the permittee shall fail to comply with any of the provisions of the permit or of this Subpart 4132. No permit shall be cancelled for default in complying with the provisions of the permit or of this Subpart 4132 until the permittee has been notified in writing of the nature of the default and has been afforded an opportunity of not less than 30 days to show why the permit should not be cancelled.

§ 4132.2–8 Crossing permits.

A permit for the crossing of reindeer over public lands, including lands under grazing permit, may be issued free of charge, upon application filed with the authorized officer at least 30 days prior to the date the crossing is to begin. The application must show the number of reindeer to be driven, date of starting, approximate period of time required, and the land to be traversed.

§ 4132.2–9 Permits for construction and maintenance of improvements; removal.

(a) Application for a permit to construct and maintain range improvements should be filed, in duplicate, with the authorized officer on an approved form. The grazing permittee, upon obtaining a permit from the authorized officer, may construct, maintain and utilize any fence, building, corral, reservoir, well, or other improvement needed for the exercise of the grazing privileges under the grazing permit. The permittee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes.

(b) The permittee, within 90 days from the date of expiration or termination of the grazing permit, or within any extension of such period, shall be allowed to remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

§ 4132.3 Protests and appeals.

(a) Protests against an application for a grazing permit shall be filed in duplicate, with the authorized officer; contain a complete disclosure of all facts upon which the protest is based; and describe the lands involved in such protests. It shall be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest shall be accompanied by an application for a grazing permit.

(b) An appeal may be taken from any decision of the authorized officer to the Director, and from any decision of the Director to the Secretary, pursuant to Appeals and Contests (Parts 1840 and 1850 of this chapter).

§ 4132.4 Trespass.

(a) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in this Subpart 4132 is unlawful and is prohibited.

(b) Any person who wilfully violates any of the rules and regulations in this Subpart 4132 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

Group 4200—Wildlife

PART 4250—COOPERATIVE PROGRAMS

Subpart 4251—Joint Regulations Relating to Game Ranges or Wildlife Refuges in Grazing Districts

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4251.0–3 Authority.
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AUTHORITY: §§ 4251.0–3 to 4251.9 issued under sec. 10, 45 Stat. 1224, sec. 2, 48 Stat. 1270; 16 U.S.C. 715i, 43 U.S.C. 315a.

Subpart 4251—Joint Regulations Relating to Game Ranges or Wildlife Refuges in Grazing Districts

§ 4251.0–3 Authority.

Subpart 4251 issued under sec. 10, 45 Stat. 1224, sec. 2, 48 Stat. 1270; 16 U.S.C. 715i, 43 U.S.C. 315a.

CROSS REFERENCES: For administration of game ranges or wildlife refuges in grazing districts, see Wildlife, 50 CFR Part 25. For Fish and Wildlife Service, Department of the Interior, see Wildlife and Fisheries, 50 CFR Chapter I. For protection of wildlife, regulations of the National Park Service, Department of the Interior, see Parks, Forests, and Memorials, 36 CFR Ch. I. For regulations of the Forest Service, Department of Agriculture, relating to wildlife, see Parks, Forests, and Memorials, 36 CFR Part 241.

§ 4251.1 Protection of wildlife.

It is not permitted to hunt, trap, catch, disturb, or kill, or attempt to hunt, trap, catch, disturb, or kill any wild bird or other animal, or to take or molest the nests or eggs of such birds, on any game ranges, or wildlife refuges, except when authorized by permit issued by or under the authority of the Secretary of the Interior: *Provided*, That duly authorized grazing permittees and employees of the Department of the Interior engaged in the control of predatory animals and rodents may trap or otherwise take such rodents, predatory animals, or predacious birds when in the opinion of the Director, Fish and Wildlife Service, control measures are necessary to reduce the numbers of such animals or birds in order to safeguard the perpetuation of other species of wildlife, to protect livestock, or to conserve grazing resources, or to retard soil erosion.

§ 4251.2 Acts not permitted on game ranges or wildlife refuges.

The following acts are not permitted on lands of the United States within such game ranges, or wildlife refuges:

(a) Setting on fire, or causing to be set on fire any timber, brush, or grass, except as authorized by the resident officer in charge of such area.

(b) Building a camp fire in leaves, rotten wood, or other places where it is likely to spread; against large or hollow logs or stumps where it is difficult to extinguish it completely; or in any other dangerous place, or during windy weather, without confining it to holes or cleared spaces from which all vegetation or other inflammable material has been removed.

(c) Leaving a camp fire unattended or not completely extinguished.

(d) Disturbing, molesting, or interfering, by intimidation, threat, assault, or otherwise, with any person engaged in the management of wildlife or livestock on such ranges, or refuges, or the prevention of trespass thereon.

(e) Unless authorized by permit from the resident officer in charge, the carrying of a firearm, except by authorized Federal or State officers.

(f) Throwing or placing a burning cigarette, match, pipe heel, firecracker, or any ignited substance in any place where it may start a fire; or discharging any kind of fireworks on any part of such ranges, or refuges.

(g) The destruction, injury, defacement, removal, or disturbance in any manner, of any building, notice, sign, signboard, equipment, fence, post, road, trail, dike, dike embankment, dam, bridge, or other structure or of any other public property of any kind on such ranges, or refuges.

(h) Entering, occupying, or using, without permission from the officer in charge, any building of the United States on such areas used for administration purposes by the Department of the Interior, except in case of emergency to prevent human suffering.

(i) The entering or being upon such land with intent to destroy, molest, disturb, or injure property used, or acquired for use, by the United States, in the administration of such areas.

(j) The dumping of garbage, or other refuse or debris, or the draining or dumping of oil, acids or poisons in, or otherwise polluting any waters, waterholes, or streams within any such ranges, or refuges.

§ 4251.3 Grazing.

No cattle, sheep, horses, or other livestock are permitted to graze on the public lands within the exterior boundaries of such game ranges, or refuges, except under permit of the authorized officer of the Department of the Interior and in accordance with such conditions as he may prescribe therein, and no grazing is permitted on lands within the exterior boundaries of such game ranges, or refuges, which have been or which hereafter may be acquired by the United States for the conservation of migratory birds and other wildlife, except under permit of the authorized officer of the Department of the Interior and in accordance with such conditions as he may prescribe therein.

§ 4251.4 Specimens for scientific, exhibition, or propagating purposes.

Specimens of plant and animal life or other natural objects on any range, or refuge, may be taken for scientific, exhibition, or propagating purposes, under special permit issued under authority of the Secretary of the Interior and countersigned by the Director, Fish and Wildlife Service, but no such permit shall be deemed to authorize the taking, possession, transportation, or sale of any wildlife, or the nests or eggs of birds, contrary to State or Federal law.

§ 4251.5 Scientific studies.

Any person may enter upon any such range, or refuge, for scientific study, the taking of photographs thereon, or for other like purposes, but must comply with this part for the protection of wildlife, and the rules of this chapter for the administration of grazing districts.

§ 4251.6 Removal of surplus animals.

Whenever it shall appear after investigation that the number of any species of game animal on any such range, or refuge, shall have increased beyond the numbers specified in the Executive order establishing the particular range, it shall be the duty of the Director, Fish and Wildlife Service, and the Director, Bureau of Land Management, Department of the Interior, jointly to determine the number of surplus animals it is desirable to remove from such range, or refuge, and upon such determination such surplus animals may be removed under such conditions and in the manner authorized or prescribed by the Director, Fish and Wildlife Service.

§ 4251.7 Economic utilization of resources.

Permits to cut and remove timber or firewood, occupy or cultivate areas, use any material of commercial value, or make other like use of any lands within the exterior boundaries of such ranges, or refuges, which lands have been or may hereafter be acquired by the United States for the conservation of migratory birds or other wildlife, not inconsistent with the objects for which such ranges, or refuges, were established, may be issued by the Director, Fish and Wildlife Service, upon such terms and at such rates of charge, if any, as may be ascertained and determined by him to be commensurate with the value of the privilege given by such permits. Permits for like purposes as to other lands within such ranges, or refuges, may be issued in conformity with rules and regulations of the Department of the Interior covering such usage: *Provided*, That in order to safeguard the food and cover requirements for wildlife, permits to remove timber or firewood from the range, or refuge, shall not be issued until applications therefor have first been approved by the resident officer of the Fish and Wildlife Service and timber permittees shall make such disposition of brush, tops, lops, slashings, and other forest debris resulting from timber operations as such officer may prescribe.

§ 4251.8 Fishing.

Any person may enter upon any range, or refuge, for the purpose of fishing in accordance with the laws of the State in which such range, or refuge, is located, but must comply with the provisions of this part for the protection of wildlife, and the rules in this chapter for the administration of grazing districts.

§ 4251.9 Exhibition and revocation of permits.

Permits shall be exhibited for inspection at any reasonable time upon request of any officer or employee of the Department of the Interior engaged in the administration of such ranges, or refuges, or in the enforcement of laws and regulations applicable to wildlife. Any permit may be terminated at any time by agreement between the issuing officer and the permittee; it may be revoked by the Director, Bureau of Land Management, Department of the Interior, or his designated representative, if issued by or under his authority, or by the Director, Fish and Wildlife Service, or his designated representative, if issued by or under his authority, for noncompliance with the terms thereof or of the regulations in this chapter, for nonuse, or for violation of any law or regulation applicable to the game range, or wildlife refuge, or of any State or Federal law protecting wildlife or the nests or eggs of birds; and it is subject at all times to discretionary revocation by the Secretary under whose authority it was issued.

SUBCHAPTER E—FOREST MANAGEMENT (5000)

Group 5000—Forest Management General

PART 5040—SUSTAINED YIELD UNIT AND COOPERATIVE AGREEMENTS

Subpart 5040—Sustained Yield Unit and Cooperative Agreements; General

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5045.1 O. and C. timberlands.

AUTHORITY: The provisions of this Part 5040 issued under sec. 5, 50 Stat. 875; 43 U.S.C. 1181e.

Subpart 5040—Sustained Yield Unit and Cooperative Agreements; General

§ 5040.0–3 Authority.

(a) The act of August 28, 1937 (50 Stat. 874), relates to the administration of the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands in Oregon, both of which are hereinafter referred to as O. and C. lands. It provides that such portions of those lands now or hereafter under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timber lands, and power-site lands valuable for timber, shall be managed, except as provided in section 3 of the act, for permanent forest production, and the timber thereon shall be sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities. Nothing contained in the act shall be construed to interfere with the use and development of power sites as may be authorized by law.

(b) Section 1 of the act authorizes the Secretary of the Interior, if he determines that such action will facilitate sustained-yield management, to subdivide the revested lands into sustained-yield forest units, the boundary lines of which shall be so established that each will provide, so far as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region. The boundaries of such forest units may be established only after hearings are conducted in the vicinity of such lands.

(c) Section 2 of the act authorizes the Secretary to make cooperative agreements with other Federal or State administrative agencies or with private forest owners or operators for the coordinated management, with respect to time, rate, and method of cutting, and sustained yield, of forest units comprising parts of revested or reconveyed lands, together with lands in private ownership or under the administration of other public agencies, when by such agreements he may be aided in accomplishing the purposes of the act.

Subpart 5041—Annual Productive Capacity

§ 5041.1 Determination of annual productive capacity.

The authorized officer of the Bureau of Land Management shall determine and declare the annual productive capacity of the O. and C. lands under the principle of sustained yield. The lands shall be treated as a single unit for the purpose of applying the principle of sustained yield, except that upon the establishment of one or more sustained-yield forest units in accordance with § 5043.1, each such unit shall be treated separately in the determination of its annual productive capacity and the average annual cut of timber.

Subpart 5042—Master Units

§ 5042.1 Master units and appurtenant marketing areas.

As a basis for studies leading to the formulation of plans for the sustained-yield forest units and cooperative agreements authorized by the act, and in order to facilitate administration under the act, the authorized officer, after the determination and declaration of the annual sustained-yield productive capacity of the O. and C. lands, will divide the entire area of the O. and C., intermingled and contiguous lands into master units, on the basis of natural groupings of such lands related to each other by physical and economic factors, and will declare an appurtenant marketing area for each such master unit.

§ 5042.2 Hearings concerning master units.

(a) In order that the Director may obtain the aid and advice of interested persons and agencies, and the public may be informed as to contemplated plans, a public hearing will be held in connection with each proposed master unit. Such hearing will be held in the vicinity of the lands involved and will be open to the attendance of all interested persons, including State and local officers and representatives of dependent industries and labor. The hearing will be conducted by a representative or representatives of the Department of the Interior.

(b) At the conclusion of the hearing, the minutes thereof, together with appropriate recommendations, shall be forwarded to the Director. The Director will thereafter take such action as he deems appropriate and due notice thereof will be given to the public.

§ 5042.3 Notice of hearings concerning master units.

(a) Before any hearing is held in connection with a master unit, notice thereof will be published, once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the proposed master unit and the appurtenant marketing area are situated, and once in the FEDERAL REGISTER. The notice may also be published in a trade paper, if such publication is desirable.

(b) Such notice shall be approved by the Director.

Subpart 5043—Sustained Yield Forest Units

§ 5043.1 Establishment of units.

Sustained-yield forest units will be established by the Director within the boundaries of each master unit in such manner that each forest unit will contain sufficient forest land to furnish a sustained supply of timber to forest industries upon which a local community depends and to constitute a suitable basis for a cooperative agreement. Due consideration shall be given to establish lumbering operations for the purpose of protecting dependent communities against adverse economic effects. Each forest unit shall be established so as to promote the widest distribution of the benefits of sustained-yield management to all forest owners, operators, workers and dependent communities affected thereby.

§ 5043.2 Hearings concerning sustained-yield forest units and cooperative agreements.

Prior to the establishment of a sustained-yield forest unit, a public hearing shall be held in the vicinity of the lands involved, in accordance with section 1 of the act. Plans for the establishment of the unit and the execution of a cooperative agreement shall be considered at such hearing. The hearing will be conducted in the same manner as hearings concerning master units, as set forth in § 5042.2. The representative or representatives of the Department of the Interior who conduct the hearing will upon its conclusion make appropriate recommendations to the Director concerning the establishment of the forest unit and the execution of the cooperative agreement, forwarding at the same time a copy of the minutes of the hearing. The Director thereafter will take such action as he deems appropriate and due notice thereof will be given to the public.

§ 5043.3 Notice of hearings concerning forest units and cooperative agreements.

The provisions of § 5042.3 relative to notice of hearings concerning a master unit shall be applicable to the hearing in connection with the establishment of a sustained-yield forest unit and the execution of a cooperative agreement.

Subpart 5044—Cooperative Sustained-Yield Agreements

§ 5044.1 General items of agreements.

(a) The formulation and administration of cooperative agreements shall be guided by a policy of promoting the widest distribution of the benefits obtainable under sustained-yield management, and of preventing monopoly.

(b) A prerequisite to participation in the cooperative agreement covering a sustained-yield forest unit will be either (1) ownership of land therein upon which timber is growing in commercial quantities, or of cutover and other lands which have been restocked or are suitable primarily for the production of timber in commercial quantities, or (2) sufficient rights or interests in the timber within the unit to enable the holder of such rights or interests to fulfill the obligations involved in commitment to the agreement.

(c) In each cooperative agreement the parties shall agree, in consideration of the benefits conferred by such agreement, that the forest management of their lands shall be conducted in such manner as may be necessary to effectuate the purposes of the act. Each such cooperative agreement shall provide for (1) the disposition of timber from the Federal land in the forest unit to cooperating parties without competitive bidding at appraised prices, in accordance with sustained-yield management plans formulated or approved by the Director; (2) the time, rate, and method of cutting timber from any lands committed to such agreement; (3) the terms and conditions, but not the price, upon which private cooperating parties may sell to any person timber from their lands; (4) the terms and conditions upon which additional lands, timber, or parties may be admitted to the agreement subsequent to its original execution; (5) the protection of the reasonable interests of other owners or operators within the unit, of workers and others affected by the execution of such cooperative agreement, and of communities dependent upon the timber within such unit; and (6) such other matters as the Director shall determine are necessary or proper to achieve the objectives of the act.

(d) The provisions of a cooperative agreement, except as therein otherwise provided, shall prevail, in the administration and disposal of O. and C. timber included in such agreement, over the regulations of the Secretary of the Interior theretofore applicable to such timber.

§ 5044.2 Qualifications for agreement.

Any individual who wishes to obtain the rights of a producer under a cooperative agreement will be required to furnish satisfactory proof, prior to the execution of the agreement, that he is a citizen of the United States, or, if a partnership or association, that each member thereof is such a citizen. A corporation which wishes to become a party to such an agreement must file a certified copy of its articles of incorporation to show that it was organized under the laws of the United States or of some state territory, or possession thereof, as well as a statement setting forth the name, residence, citizenship, and amount of stock held by each of its stockholders, separately listing those of alien citizenship. A corporation organized outside of the State of Oregon must also file a certificate by the proper state official that it is authorized to do business within the State of Oregon. The Director, in his discretion, may require a corporate party to a cooperative agreement to furnish additional information as to the ownership of its stock and may deny participation in a cooperative agreement to a corporation, any of whose stock is owned, held, or controlled by citizens of another country.

§ 5044.3 Forms of agreement.

The standard form for cooperative agreements between the United States and owners and operators of non-federal lands, heretofore approved by the Secretary of the Interior, will be made available through the State Director, Portland, Oregon. Changes in the form of agreement may be made by the Director, from time to time when such changes are warranted by peculiar circumstances in a forest unit, or to reflect the experience gained from the operation of previous agreements. All such changes shall be consistent with the retention by the Director, of the authority necessary to accomplish the objectives of the act. Where Federal lands not under the jurisdiction of the Secretary

of the Interior are involved, different forms will likewise be adopted.

§ 5044.4 Execution of agreement.

The Director of the Bureau of Land Management, after consideration of the minutes of the hearing and the recommendation of the hearing officer, will execute the agreement if he is of the opinion that it will promote the achievement of the objectives of the act and is otherwise in the public interest. No rights shall accrue to a party under a cooperative agreement until the Director has executed the agreement on behalf of the United States.

Subpart 5045—Exchanges

§ 5045.1 O. and C. timber lands.

Exchanges for the purpose of consolidating and segregating O. and C. timber lands, or which otherwise are in furtherance of the O. and C. timber management program are authorized by the act of July 31, 1939 (53 Stat. 1144), and the regulations thereunder. (See Subpart 2244 of this chapter.)

Group 5400—Forest Product Disposals

PART 5400—FOREST PRODUCT DISPOSALS; GENERAL

Subpart 5400—Forest Product Disposals; General

Sec.

5400.0–3 Authority.
5400.0–6 Definitions.

Subpart 5401—Annual Timber Sale Plan

5401.1 Plan.

Subpart 5402—Appraisal and Measurement

5402.1 Policy on appraisal and measurement.

Subpart 5409—Alaska Timber Sales

5409.1 Small sales of timber for use in Alaska.
5409.1–1 Lands from which timber may be sold.
5409.1–2 Appraised prices.
5409.1–3 Applications; who may purchase.
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5409.1–6 Appeals.
5409.2 Sale of timber for exportation from Alaska.
5409.2–1 Small-quantity sales.
5409.2–2 Large-quantity sales.
5409.2–3 Application to purchase; deposit.
5409.2–4 Publication and posting; marking of land.
5409.2–5 Action on application; field report and appraisal.
5409.2–6 Execution of contract; bond required.
5409.2–7 Renewals of contract.
5409.2–8 Land from which timber may not be sold.

AUTHORITY: §§ 5400.0–3 to 5409.2–8 issued under 61 Stat. 681, as amended, 69 Stat. 367; 30 U.S.C. 601 et seq.; 48 Stat. 1269; 43 U.S.C. 315; sec. 11, 30 Stat. 414, as amended; 43 U.S.C. 423; sec. 5, 50 Stat. 375; 43 U.S.C. 1131e.

Subpart 5400—Forest Product Disposals; General

§ 5400.0–3 Authority.

(a) *O and C and public domain sales.* (1) The act of August 28, 1937 (50 Stat. 874, 43 U.S.C. 1181a) authorizes the sale of timber from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and directs that such lands shall be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating streamflow and contributing to the economic stability of local communities and industries and providing recreational facilities.

(2) The act of July 31, 1947 (61 Stat. 681), as amended by the acts of July 23, 1955 (69 Stat. 367, 30 U.S.C. 601 et seq.) and the act of September 25, 1962 (76 Stat. 587) authorizes the disposal of timber and other vegetative resources on public lands of the United States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315–315o–1), as amended, and the United States mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(i) The act also authorizes the United States, its permittees, and licensees to use so much of the surface of any unpatented mining claim located under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

(ii) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this subpart only with the consent of such other Federal department or agency or of such state, or local governmental unit. The act of July 23, 1955, supra, provides, however, that the Secretary of Agriculture shall dispose of materials under the act of July 31, 1947, as amended, supra, if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

(iii) The provisions of the act of July 23, 1955, supra, in disposal of vegetative or mineral materials do not apply to lands in any national park, or national monument or to any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(3) The sale of timber in Alaska will be made under pertinent statutes and the applicable regulations (Subpart 5409); however, sales of more than a two-year supply of timber for domestic use in Alaska may be authorized under the act of July 31, 1947 (61 Stat. 631), as amended.

(b) *Alaska sales.* (1) Authority for small sales of timber for use in Alaska. Section 5409.1 is issued under authority of Sec. 11, 30 Stat. 414, as amended; 48 U.S.C. 421. Section 5409.1 is contained in Circular 1901, 20 F.R. 1216, Feb. 26, 1955; 26 F.R. 5006, June 6, 1961. (2) Authority for sale of timber for exportation from Alaska when lawfully cut, if in the judgment of the Secretary of the Interior the supply of timber for local use will not be endangered thereby, is contained in the act of April 12, 1926 (44 Stat. 242; 16 U.S.C. 616).

(c) *Non-sale disposals act of June 3, 1878.* (1) Authority for free use of timber on mineral and nonmineral public lands. Section 5461.1 is issued under authority of the act of June 3, 1878 (20 Stat. 88; 16 U.S.C. 604–606) and March 3, 1891 (26 Stat. 1093; 16 U.S.C. 607), as supplemented by the act of January 11, 1921 (41 Stat. 1088; 16 U.S.C. 604, 612), settlers upon public lands, citizens and bona fide residents of the State, and corporations doing business in the State may obtain free use permit for timber.

(2) Authority for the issuance of regulations governing the free use of timber for fuel in drilling operations by oil and gas lessees is contained in section 32 of the act of February 25, 1920 (41 Stat. 405; 30 U.S.C. 189).

CROSS REFERENCE: For additional free use privileges, see § 5461.3.

(d) *Non-sale disposals act of July 23, 1955.* The act of July 23, 1955, supra, authorizes the Secretary of the Interior in his discretion to permit free use of timber or other vegetative resources or mineral materials by any Federal or State governmental agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale. The act of July 23, 1955, supra, also provides in part, under certain circumstances, for a mining claimant to obtain free-use of timber from other Bureau administered land in lieu of timber disposed of by the Bureau from lands covered by his mining locations. See § 5461.3–8.

(e) *Nonsale disposals act of May 14, 1898.* Section 5461.2 is issued under the authority of Sec. 11, 30 Stat. 414, as amended; 48 U.S.C. 423. Section 5461.2 appears at 19 F.R. 8880, Dec. 23, 1954. (1) Section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U.S.C. 423), empowers the Secretary of the Interior to permit the use of timber found upon the public lands in Alaska by actual settlers residents, individual miners, and prospectors for minerals for firewood, fencing, buildings, mining, prospecting, and for domestic purposes as may actually be needed by such persons for such purposes. This section was amended by the Act of June 15, 1938 (52 Stat. 699), so as to permit the use of such timber by churches, hospitals, and charitable institutions for firewood, fencing, buildings, and for other domestic purposes.

CROSS REFERENCE: For additional free use privileges, see § 5461.3 of this chapter.

§ 5400.0–5 Definitions.

Except as the context may otherwise indicate, as the terms are used in Subparts 5410–5450 and in contracts issued thereunder:

(a) "Bureau" means of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(d) "O. and C. Lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Land Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the act of August 28, 1937 (50 Stat. 874).

(e) "Public Lands" means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management, and lands from which the vegetative resources may be sold in accordance with the provisions of § 5400.-03(a)(2)(ii).

(f) "Timber" means standing trees, downed trees, logs or forest products of any type which are capable of being measured in board feet.

(g) "Other vegetative resources" means all vegetative material which cannot be measured in units of board feet of timber.

(h) "Set-aside" means a designation of timber for sale which is limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR Part 121) under the authority of section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

(i) "Logging unit" means a portion of the cutting area under contract clearly designated or marked by the authorized officer for the purpose of administering optional bonding and payment provisions of the timber sale contract. The total cutting area under contract may not be divided into less than two logging units.

(j) "Third party scaling" means the measurement of logs by a scaling organization, other than a government agency, approved by the Bureau.

(k) "Sale value" means the value of the stumpage sold under permit from the area.

Subpart 5401—Annual Timber Sale Plan

§ 5401.1 Plan.

Plans for the sale of timber from the O. and C. and public lands will be developed annually. Suggestions from prospective purchasers of such timber may be received to assist in the development of a sound annual timber sale plan. Such plan may be advertised in a newspaper of general circulation in the area in which the timber is located. Such advertisement shall indicate generally the probable time when the various tracts of timber included in the plan will be offered for sale, set-asides if any, and the probable location and anticipated volumes of such tracts. The authorized officer may subsequently change, alter or amend the annual timber sale plan.

Subpart 5402—Appraisal and Measurement

§ 5402.1 Policy on appraisal and measurement.

(a) All timber or other vegetative resources to be sold shall be appraised and in no case shall be sold at less than the appraised value. Measurement shall be by tree cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

(b) As the general practice, the Bureau will sell timber on a tree cruise basis.

(c) Scaling by the Bureau will be used from time to time for administrative reasons. Such reasons would include but not be limited to the following: To improve cruising standards; check accuracy of cruising practices; for volumetric analysis; and for highly defective timber where it is impossible to determine the tree cruise volume within a reasonable degree of accuracy.

(d) Third party scaling may be ordered by the Bureau after a determination that all of the following factors exist: (1) A timber disaster has occurred; (2) a critical resource loss is imminent; (3) measurement practices listed in paragraphs (b) and (c) of this section are inadequate to permit orderly disposal of the damaged timber. Third party scaling volumes must be capable of being equated to Bureau standards in use for timber depletion computations, to insure conformance with sustained yield principles.

Subpart 5409—Alaska Timber Sales

§ 5409.1 Small sales of timber for use in Alaska.

§ 5409.1–1 Lands from which timber may be sold.

Timber may be sold from vacant public lands in Alaska, and from withdrawn public lands in Alaska when permitted by the order of withdrawal.

CROSS REFERENCES: For timber sales in Alaska not authorized by this part, see § 5400.0–3(a)(2). For timber sales for export, see § 5409.2.

§ 5409.1–2 Appraised prices.

No sales may be made below the appraised prices established by the State Director.

§ 5409.1–3 Application; who may purchase.

(a) An application to purchase timber should be submitted on a form approved by the Director which may be obtained from any office of the Bureau in Alaska. The application should be filed in the district in which the timber desired is situated, or in any forestry office of the Bureau in Alaska. It must be accompanied by a deposit in accordance with § 5409.1–4.

(b) The application may be made by an individual, a partnership, an unincorporated association, or a corporation organized under the laws of the United States, or of a State or Territory thereof, and authorized to transact business in Alaska.

§ 5409.1–4 Cash deposit.

(a) If the estimated sale value of the timber applied for equals or exceeds $25, the application must be accompanied by a deposit of $25, or 15 percent of the estimated sale value, whichever is the greater. If the estimated sale value is less than $25, a deposit representing the full estimated sale value must be made.

(b) The deposit may be in the form of cash, a money order, cashier's check, certified check, or personal check made payable to the Bureau of Land Management. At the discretion of the authorized officer, larger deposits—up to the full sale value—may be required before the permit is issued.

(c) In the discretion of the authorized officer, a performance bond may be required of not less than 25 percent of the sale value. Upon satisfactory completion of the permit the bond, if in cash or securities will be returned to the permittee, and if in the form of a surety bond will be cancelled.

(d) After a permit is issued, the minimum deposit is not returnable, even if no timber has been cut. Where the value of the timber to be cut exceeds the amount of the deposit, the deposit will be credited as partial payment against the total sale value.

(e) Additional payments shall be made by the permittee at the request of the authorized officer, or when the value of the timber cut equals the amount of the deposit plus previous payments. The computed volume, based on an inventory of stumps made by the authorized officer shall be prima facie evidence in establishing the volume of forest products cut by the permittee.

§ 5409.1–5 Permits.

(a) *Issuance of permit.* (1) A permit to cut and remove timber will be issued on a form approved by the Director. The authorized officer may, in his discretion, reject the application, or he may amend or otherwise limit the area, species, products, or volume applied for or add such additional provisions and conditions which, in his opinion, are required by sound forest practices, provided the applicant consents. If the applicant refuses consent his deposit will be refunded. The appropriate Bureau sign must be posted in a conspicuous place on the land, before any timber is cut.

(2) Permits will be valid for one year unless an extension is granted. Extensions will be granted only on a showing that the permittee, because of matters beyond his control, was unable to cut and remove the timber within the life of the permit and that the interests of the Government will not be prejudiced by the extension.

(3) Where, after the issuance of a permit and before the timber covered thereby is cut and removed the timber is destroyed or damaged, in whole or in part, without fault on the part of the permittee or his agent, the authorized officer, in his discretion, may grant the permittee relief by the amendment of the permit to include an equivalent value of other timber.

(b) *Amendment of permit.* The original permit may be amended at any time during the permit year with the consent of the permittee. For example, the permit volume might be increased to meet additional requirements of the permittee.

(c) *Subsequent claim subject to timber application.* When a valid homestead, mining or other claim is initiated on public land subsequent to the issuance of a permit to cut timber and the posting on the land of the appropriate sign, such subsequent claimant's rights are subject to the right of the timber applicant to cut and remove the timber covered by the permit.

(d) *Revocation of permit.* A permit may be revoked for failure of the permittee to comply with the provisions of these regulations, or with the terms of the permit. If cutting is being done in violation of the terms of the permit, any authorized officer of the Bureau may order the cutting stopped, revoke the permit, and demand such additional payment for the timber as may be due the Government.

(e) *Removal of personal property upon termination of permit.* (1) Upon termination of a permit the permittee shall have the right at any time within 60 days thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the permit have been paid. The authorized officer, in his discretion, may grant requests for a reasonable extension. Any improvements, equipment, or personal property remaining on the Government land after the time for removal has expired shall become the property of the United States.

(2) Improvements needed by the permittee for the severance, extraction, or removal of other Government-owned materials under existing contracts or permits may be left on the Government land for such period and under such terms as may be prescribed by the authorized officer.

§ 5409.1–6 Appeals.

A party aggrieved by any official action involving his application or permit may appeal to the Director, Bureau of Land Management, and from the Director to the Secretary of the Interior, pursuant to Appeals and Contests contained in Parts 1840 and 1850 of this chapter.

§ 5409.2 Sale of timber for exportation from Alaska.

§ 5409.2–1 Small-quantity sales.

Sales of timber to be cut for export may be made pursuant to the procedure and under the conditions set forth in § 5409.1, where quantities are such as will be disposed of from year to year, and the purchases are made by those who do not contemplate large-scale production and an expenditure of large sums of money for developing enterprises for the exportation of such timber.

§ 5409.2–2 Large-quantity sales.

Sales of timber suitable for manufacturing purposes are hereby authorized in quantities, if found available, sufficient to supply a mill or proposed mill for a period of as much as 20 years, when it is satisfactorily shown that the purchaser in good faith intends to develop an enterprise for the cutting of this class of timber for export from Alaska and the sale does not endanger the supply of such timber for local use. The amount of timber that any one purchaser will be permitted to purchase under this provision and the period of the contract will be governed by the capacity of the mill and the estimated quantity that it will be capable of producing during the period covered by the contract of sale. When a 20 years' supply is sold the period within which the same must be cut (20 years) will begin to run from the time that the contract of sale is executed, if the manufacturing plant has been built, or from the time that the mill has been constructed and ready to begin operations if it is to be built, but in no case will more than 2 years be allowed for construction: *Provided, however,* That if operations have not been commenced within three years from the date of the execution of the contract the Secretary of the Interior, upon a satisfactory showing, may in his discretion excuse the delay. Commencement of operations in this sense will be construed as a bona fide commencement of actual cutting of timber in quantity sufficient to show that it is the purpose of the purchaser to fulfill the conditions of the contract and that it was not entered into merely for speculative purposes.

§ 5409.2–3 Applications to purchase; deposit.

Applications to purchase timber for export from Alaska pursuant to the act of April 12, 1926, must be filed in duplicate in the land office for the district wherein the lands to be cut over are situated and should show: (a) Name, postoffice address, residence, and business location of applicant; (b) amount or approximate amount of board feet of timber that the applicant desires to purchase; (c) a description by legal subdivision or subdivisions, if surveyed, or by metes and bounds with reference to some permanent natural landmark, if unsurveyed, and the area or approximate area of the land from which the timber is to be cut, and if the lands are within the area (Alaskan Timber Reserves) withdrawn pursuant to the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 301, 302, 303–308), in aid of the construction of the Alaskan Government-owned railroads it should be so stated, and evidence of

consent previously obtained from The Alaska Railroad should be filed with the application; (d) whether or not the applicant is prepared to commence cutting immediately, and if not, approximately how long before timber cutting operations will be commenced; (e) the estimated annual capacity of the mill or proposed mill, and the amount of money invested or to be invested in the establishment of the enterprise, accompanied by evidence as to the financial standing of the applicant and a statement showing the general plan of operation and the purpose for which the timber is to be used. A minimum sum of $200 must be deposited with each application, as an evidence of good faith and for the purpose of helping to defray the cost of appraisal. The sum of such deposit may be increased when, in the opinion of the Secretary of the Interior, the interests of the Government require that a larger amount be deposited. If the sale is consummated, the amount of the deposit will be credited on the purchase price without deduction for the cost of appraisal. All remittances must be in cash or by certified check or postal money order.

§ 5409.2–4 Publication and posting; marking of land.

Immediately upon the filing of an application to purchase timber under § 5409.2–2 a notice shall be published at the expense of the applicant in a designated newspaper published in the vicinity of the land from which the timber is to be cut and most likely to give notice to the general public, once a week for a period of five consecutive weeks, in accordance with § 1824.4 of this chapter. The description of the land in the notice must be identical with the description in the application. A copy of the notice will be posted in a conspicuous place in the land office during the period of publication. Upon the execution of a contract, the purchaser shall, if the lands from which the timber is to be cut are unsurveyed, cause the boundaries to be blazed or otherwise marked as provided in the contract. This requirement has been adopted in order that others who may subsequently desire to purchase timber or to settle upon or enter the land may have notice that the timber has been applied for.

§ 5409.2–5 Action on application; field report and appraisal.

The manager will make appropriate notations upon the records of his office. The appraisal rates will be based upon a fair stumpage rate taking into consideration the quality of the timber and its accessibility to market. In no event will any timber suitable for manufacturing purposes be appraised at less than $1 per thousand feet, board measure. The Government reserves the right to reappraise the remaining standing timber at the expiration of 5 years from the date of commencement of the timber cutting period as set forth in §5409.2–2 and at intervals of 5 years thereafter, but in no instance shall the appraisal be at more than double the rate of the original appraisal.

§ 5409.2–6 Execution of contract; bond required.

If such sale appears warranted, the Bureau of Land Management will offer the timber for sale by competitive bidding in such newspapers and publications and for such period of time as may be designated. The successful bidder will be notified that he will be allowed 30 days from receipt of such notice within which to enter into a contract with the Government through the Bureau of Land Management as its agent to purchase the timber offered for sale pursuant to the rules and regulations of the Department of the Interior pertaining thereto, and shall execute and file therewith a bond in a sum not less than 50 percent of the stumpage value of the estimated amount of timber to be cut during each year of the contract. The said bond must have as surety a bonding company shown on an approved list issued by the Treasury Department, and it shall be conditioned on the payment for the timber in accordance with the terms of the contract and to the faithful performance of the contract in other respects and to observance of the rules and regulations pursuant to which the sale is made. Contracts and bonds hereunder will be executed on forms approved by the Director.

§ 5409.2–7 Renewals of contract.

At the expiration of a contract a new contract may, in the discretion of the authorized officer, be entered into for a period of not to exceed 20 years, where there is sufficient timber available to warrant it. Prior good faith of the purchaser and substantial compliance with the conditions of the expired contract will be given consideration with reference to awarding a new contract. A new appraisal shall be made at that time for the purpose of fixing the stumpage price.

§ 5409.2–8 Lands from which timber may not be sold.

The rules and regulations in § 5409.2, governing the sale of timber for export, are not applicable to timber on national forests, Indian or Eskimo claims, or lands otherwise appropriated, reserved, or withdrawn, for any purpose, except where the terms of the reservation or withdrawal order permit.

PART 5410—COMPETITIVE SALES OF FOREST PRODUCTS

Subpart 5411—Policy

§ 5411.1 Competitive sales.

All sales other than those specified in § 5421.1 shall be made only after inviting competitive bids through publication and posting. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

(Sec. 5, 50 Stat. 875; 43 U.S.C. 1181e; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.)

PART 5420—NEGOTIATED SALES OF FOREST PRODUCTS

Subpart 5421—Policy

§ 5421.1 Negotiated sales.

(a) When it is determined by the authorized officer to be in the public interest, he may sell at not less than the appraised value, without advertising or calling for bids, timber where the contract is for the sale of less than 250 M board feet.

(b) Timber on the right-of-way of a logging road and danger trees adjacent to the right-of-way on O&C lands may be sold at not less than the appraised value without advertising or calling for bids to (1) permittee who constructs a road pursuant to a permit issued under subpart 2234 of this chapter, or (2) a contractor who is constructing a road with Government funds.

(c) In addition to paragraph (b) of this section, negotiated sales with no limitation as to volume may be made if:

(1) The contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State or local government agency and the public exigency will not permit the delay incident to advertising; or if

(2) The contract is for the disposal of property for which it is impracticable to obtain competition.

(d) A report will be made to Congress on January 1, and July 1 of each year of the contracts from public lands made under paragraph (c) (1) and (2) of this section during the period since the date of the last report. This report shall include name of purchaser; the appraisal value of the material involved; the amount of each contract; and description of the circumstances leading to the determination that the contract should be entered into by negotiation instead of competitive bidding after formal advertising.

(Sec. 5, 50 Stat. 875; 43 U.S.C. 1181e; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.)

PART 5430—PRESALE PREPARATION, ADVERTISEMENT AND CONTRACT PREPARATION

Subpart 5432—Advertisement

Sec.
5432.1 Advertising.

Subpart 5433—Bids and Award of Contract

5433.1 Qualifications of bidders and purchasers.
5433.2 Deposits with bids.
5433.3 Conduct of sales.
5433.4 Award of contract.

Subpart 5435—90-Day Sales

5435.1 Bid and award.

Subpart 5436—Contract Forms

5436.1 Provisions.

Subpart 5437—Performance Bonds

5437.1 Requirements.

AUTHORITY: §§ 5432.1 to 5437.1 issued under sec. 5, 50 Stat. 875; 43 U.S.C. 1181e; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.

Subpart 5432—Advertisement

§ 5432.1 Advertising.

(a) Competitive timber sales shall be advertised in a newspaper of general circulation in the area in which the timber or other vegetative resources are located and a notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks, except that sales amounting to less than 500 M board feet, need be published once only. When in the discretion of the authorized officer longer advertising periods are desired, such longer periods are permitted.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which timber or other vegetative resources is being offered, the species, estimated quantities, the unit of measurement, appraised values, time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, which tracts of timber if any have been designated as set-asides, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

Subpart 5433—Bids and Award of Contract

§ 5433.1 Qualification of bidders and purchasers.

(a) A bidder or purchaser for a sale must be (1) an individual who is a citizen of the United States, (2) a partnership composed wholly of such citizens, (3) an unincorporated association composed wholly of such citizens, or (4) a corporation authorized to transact business in the States in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 5433.2. To qualify for bidding to purchase set-aside timber, the bidder must accompany his deposit with a self-certification statement that he is qualified as a small business concern as defined by the Small Business Administration (13 CFR Part 121).

(b) Where a timber sale notice provides that the successful bidder may use a Small Business Administration road construction loan, and the bidder has reason to believe that he qualifies for such road construction loan under SBA regulations (13 CFR Part 121), the bidder shall submit with his deposit a statement of his intention to file with SBA for such SBA road construction loan. If a statement is not timely filed, the Bureau may not participate in the cooperative loan program.

§ 5433.2 Deposits with bids.

Sealed bids must be accompanied by a deposit of not less than 10 percent of the appraised value of the timber or other vegetative resources. For offerings at oral auction, bidders must make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers' or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidders, shall be returned. Except for corporate surety bid bonds, the deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer.

§ 5433.3 Conduct of sales.

(a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification in conformance with § 5433.1 or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) Only bids of small business concerns which have filed a self-certification statement as required by § 5433.1 may be considered for sales subject to set-asides. When no such bids are received, the timber may be sold under § 5435.1 in the same manner as timber not previously made subject to a set-aside. When timber subject to a set-aside is not sold for any other reason, the sale may be rescheduled for a set-aside sale.

(d) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement.

§ 5433.4 Award of contract.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible, or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond; the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided,* That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the stipulated time, his bid deposit shall be retained as liquidated damages.

Subpart 5435—90-Day Sales

§ 5435.1 Bid and award.

If no bid is received within the time specified in the advertisement of sale, and if the authorized officer determines that there has been no significant rise in the market value, he may in his discretion, keep the sale open for not to exceed 90 days by posting notice thereof in a conspicuous place in the office where bids are to be submitted. If during such period a written bid is submitted, together with the required deposit, for not less than the advertised appraised value, a notice of such bid shall be posted immediately after receipt of such bid for seven successive days in the same office and in the same manner. If no other written bid is received during the 7-day posting period, the sole bidder shall be deemed the high bidder. If, however, during such seven day posting period other written bids are received, an oral auction shall be conducted in the usual manner for those who have submitted written bids. The authorized officer shall notify those who have submitted written bids of the time and place of the oral auction. The written bids shall be considered the initial bids in such oral auction. If there is a tie in the high written bids that are submitted during the seven day posting period and if no higher bid is offered during the oral auction, the party who first submitted the high bid shall be deemed the high bidder.

Subpart 5436—Contract Forms

§ 5436.1 Provisions.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as

road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and protection of improvements, watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

Subpart 5437—Performance Bonds

§ 5437.1 Requirements.

(a) A minimum performance bond of not less than 20 percent of the total contract price will be required for all contracts of $2,500 or more. A minimum performance bond of not less than $500 will be required for all installment contracts less than $2,500. For cash sales less than $2,500, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(b) The authorized officer may allow the cutting of timber before payment of the second and subsequent installments as provided in this paragraph. The authorized officer shall designate logging units within the cutting area under contract and assign to them values solely for the purpose of increasing the amount of the performance bond and for payment. The purchaser shall increase the minimum performance bond required by paragraph (a) of this section by an amount equal to the value of the timber on each logging unit and shall obtain written approval of the authorized officer for the adjusted bond prior to cutting any timber on such unit. Cutting authorized in advance of payment shall be limited to one logging unit and the increased amount of the bond shall be used to assure payment for the timber on that unit. Upon payment for the timber on such unit, the increased amount may then be applied to another logging unit subject to any adjustment in the amount of the performance bond to cover the value of timber on such logging unit.

(c) As contract provisions are completed to the satisfaction of the authorized officer, he may, in his discretion, reduce the amount of the performance bond required: *Provided, however,* The amount of the performance bond shall not be reduced below the minimum required by paragraph (a) of this section until payment for the timber sold is complete.

PART 5440—SALE ADMINISTRATION

Subpart 5441—Contract Performance

Sec.
5441.2 Payment.
5441.3 Time for cutting and removal.

Subpart 5443—Extension of Contracts

5443.1 Time.
5443.2 Reappraisal.

Subpart 5445—Assignment of Contract

5445.1 Assignments.

AUTHORITY: §§ 5441.2 to 5445.1 issued under sec. 5, 50 Stat. 875; 43 U.S.C. 1181e; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.

Subpart 5441—Contract Performance

§ 5441.2 Payment.

(a) Except as provided in § 5437.1(b) no part of any timber or other vegetative resources sold may be cut or removed unless advance payment has been made as provided in the contract.

(b) For sales under $500 the full amount shall be paid prior to or at the time the authorized officer signs the contract. For sales of $500 or more the authorized officer may allow payment by installments as provided in the following paragraph (c) of this section.

(c) Contract installment payments shall be determined by the authorized officer as follows:

(1) Payment in advance of cutting. For sales under $100,000 installment payments shall be not less than 10 percent of the total purchase price. For sales of $100,000 or more installment payments shall not be less than $10,000. The first installment shall be paid prior to, or at the time the authorized officer signs the contract. The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of the material cut or removed equals the sum of all the payments minus the first installment.

(2) Payment in advance of removal. The first installment shall be paid in the same manner as provided in subparagraph (1) of this paragraph. If cutting is permitted before payment of the second and subsequent installments, as provided by § 5437.1(b), the amounts of the second and subsequent installment payments shall be based on the authorized officer's determination of the value of the timber located upon the logging units. Payment shall be made for the value of the timber on each logging unit in advance of removal of any timber from such unit.

(d) The total amount of the contract purchase price must be paid prior to expiration of the original time for cutting and removal under the contract. For a cruise sale the purchaser shall not be entitled to a refund even though the amount of timber cut, removed, or designated for cutting may be less than the estimated total volume shown in the contract. For a scale sale, if it is determined after all designated timber has been cut and measured that the total payments made under the contract exceed the total value of the timber measured, such excess shall be refunded to the purchaser within 60 days after such determination is made.

§ 5441.3 Time for cutting and removal.

Time for cutting and removal of timber or other vegetative resources sold shall not exceed a period of thirty months except that such time for cutting and removal may be extended as provided in § 5443.1.

Subpart 5443—Extension of Contracts

§ 5443.1 Time.

If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than thirty (30) days prior to the expiration date of the time for cutting and removal but not earlier than ninety (90) days prior thereto. Additional extensions may be granted if the purchaser submits a written request not later than thirty (30) days prior to the expiration date of an extension but not earlier than ninety (90) days prior thereto. No extension may be granted without reappraisal as provided in § 5443.2.

§ 5443.2 Reappraisal.

(a) If an extension is granted as provided in § 5443.1 the material sold shall be reappraised by the authorized officer. In making the reappraisal, the authorized officer shall use the Bureau of Land Management's prescribed procedures.

(b) For a cruise sale the timber sold remaining on the contract area shall be

reappraised for the purpose of computing the reappraised total purchase price. The reappraised total purchase price shall not be less than the total purchase price established by the contract or previous extension. The reappraised total purchase price shall be paid in advance as a condition of granting an extension.

(c) For a scale sale each species of timber remaining on the contract area shall be reappraised. The reappraised unit price for each species shall be effective for the remaining life of the contract: *Provided, however,* The reappraised unit price for each species shall not be less than the unit price established by the contract or previous extension.

Subpart 5445—Assignment of Contract

§ 5445.1 Assignments.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the timber or other vegetative resource is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 5437.1 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

PART 5460—NON-SALE DISPOSALS

Subpart 5461—Free Use

Sec.

5461.1 Act of 1878.
5461.1–1 Free use of timber on mineral and nonmineral public lands.
5461.1–2 Use by settlers and homesteaders of timber on their pending claims.
5461.1–3 Use of timber on lands covered by grazing leases, by lessees, and others.
5461.1–4 Free use of timber upon oil and gas leases.
5461.2 Act of 1898 (Alaska).
5461.2–1 Free use privilege; cutting by agent.
5461.2–2 Free use of timber for Government purposes.
5461.2–3 Permits.
5461.2–4 Timber on withdrawn lands.
5461.2–5 Trespass; penalty for unauthorized cutting of timber.
5461.2–6 Appeals.
5461.2–7 Governing regulations for free use by oil and gas claimants.
5461.3 Act of 1947.
5461.3–1 Free use of timber under other statutes.
5461.3–2 Permits.
5461.3–3 Conservation practices.
5461.3–4 Removal by agent.
5461.3–5 Removal of improvements.
5461.3–6 Permits to governmental units.
5461.3–7 Permits to non-profit organizations.
5461.3–8 Permits to mining claimants.

AUTHORITY: §§ 5461.1 to 5461.3–8 issued under 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.; 48 Stat. 1269; 43 U.S.C. 315; sec. 11, 30 Stat. 414, as amended; 48 U.S.C. 423; R.S. 2478; 43 U.S.C 1201; sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 5461—Free Use

§ 5461.1 Act of 1878.

§ 5461.1–1 Free use of timber on mineral and nonmineral public lands.

(a) *Lands on which timber may be cut.* Free-use permits to cut timber may be issued covering public lands as follows: (1) Mineral lands, unoccupied and unreserved and not subject to entry under existing laws of the United States, except for mineral entry, in the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. (Act of June 3, 1878, 20 Stat. 88; 16 U.S.C. 604–606); (2) Nonmineral, unoccupied, and unreserved public lands in the States mentioned and also in the States of California, Oregon, and Washington.

(b) *Kind of timber which may be cut.* The proper protection of the timber and undergrowth necessarily varies with the nature of the topography, soil, and forest. No timber not matured may be cut, and each tree taken must be utilized for some beneficial domestic purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste. Stumps will be cut so as to cause the least possible waste and all trees will be utilized to as low a diameter in the tops as possible. All brush, tops, logs, and other forest debris made in felling and removing timber under this section shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the authorized officer, and failure on the part of the applicant, or an agent cutting for an applicant, to comply with this requirement will render him liable for all expenses incurred by the authorized officer in putting this regulation into effect.

(c) *Area of land to be cut over.* The permits shall limit the area of cutting to embrace only so much land as is necessary to produce the quantity of timber applied for.

(d) *Use which may be made of timber.* Timber may be cut under approved permit when actually needed for firewood, fencing, building, or other agricultural, mining, manufacturing, and domestic purposes.

(e) *Exportation of timber.* Timber may not be exported from the State in which it is cut except: (1) Timber from a specified area in Wyoming may be exported into Idaho (act of July 1, 1898, 30 Stat. 618; 16 U.S.C. 607, 611); (2) Timber from a specified area in Montana may be exported into Wyoming (act of March 3, 1901, 31 Stat. 1439; 16 U.S.C. 607, 613); (3) Under the act of March 3, 1919 (40 Stat. 1321; 16 U.S.C. 608), citizens of Malheur County, Oregon, may cut timber in Idaho and remove such timber to Malheur County, Oregon; (4) Under the act of March 3, 1919 (40 Stat. 1322; 16 U.S.C. 609), citizens of Modoc County, California, may cut timber in Nevada and remove such timber to Modoc County, California; (5) Timber from a specified area in Arizona may be exported into Utah (act of February 27, 1922, 42 Stat. 398; 16 U.S.C.

610); (6) Citizens of Bear Lake County, Idaho, may cut timber from public lands in Lincoln County, Wyoming, and remove such timber to Bear Lake County, Idaho, but no live standing timber may be taken without compensation (act of August 21, 1935, 49 Stat. 665; 16 U.S.C. 611a).

(f) *Application and permit*—(1) *Information to be furnished by applicant.* (i) Applications should be filed in duplicate and should set forth the names and post-office addresses of the applicants, and any agent or agents who may be employed to procure the timber. Where a corporation is the applicant, the State in which it was incorporated should also be shown.

(ii) Blank forms for making application may be procured from the State Supervisor for the State in which the timber to be removed is located.

(iii) Applications should show the amount of timber required by each applicant; the use to be made thereof; a description of the land from which the timber is to be cut, by subdivision, section, township, and range, if surveyed, or by natural objects sufficient to identify the same if unsurveyed; and the date it is desired to begin cutting.

(2) *Duration of permit.* All rights and privileges under a permit shall terminate at the expiration of the period of 1 year from the date of approval of the permit.

(3) *Liability of applicant.* Where permits are secured by fraud, or where timber is not taken or used in accordance with the terms of the law or §§ 5400.0–3(c)(1) and 5461.1–1(a) to 5461.1–1(g) the Government may enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands. For criminal liability, see 18 U.S.C. 1852.

(g) *Agents*—(1) *Cutting of timber by agents.* Where one or more persons desire timber, and are not in a position to procure the same for themselves, an agent or agents may be appointed for that purpose. Such agent shall not be paid more than a fair recompense for the time, labor, and money expended in procuring the timber and manufacturing the same into lumber, and no charge shall be made for the timber itself. The said compensation must be set forth in a written contract to be entered into by the parties, and a copy thereof must be filed with the application.

(2) *Cutting of timber by agent who is a sawmill operator.* If the amount of timber applied for exceeds $50 in stumpage value, for any continuous period of 12 months, and the timber is to be procured by an agent who is a sawmill operator, a bond equal to three times the amount of the stumpage value of the timber applied for will be required, conditioned upon the faithfull performance of the requirements.

§ 5461.1–2 Use by settlers and homesteaders of timber on their pending claims.

This section is issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(a) *Timber cutting on unperfected claims.* Homestead claimants who have made bona fide settlements upon public land, surveyed or unsurveyed, and who are living upon, cultivating, and improving the same in accordance with law and the rules and regulations of the Department of the Interior, with the intention of acquiring title thereto, are permitted to cut and remove, or cause to be cut and removed, from the portion thereof being cleared for cultivation, so much timber as is actually necessary for that purpose, or for buildings, fences, and other improvements on the land entered. (See 18 U.S.C. 1852.)

(b) *Clearing for cultivation.* In clearing for cultivation, should there be a surplus of timber over what is needed for the purposes above specified, the claimant may sell or dispose of such surplus; but it is not allowable to denude the land of its timber for the purpose of sale or speculation before the title has been conveyed to him by patent.

(c) *Abandonment of claim.* The abandonment of a claim after the timber has been removed is presumptive evidence that the claim was made for the primary purpose of obtaining the timber.

(d) *Exchange of timber for lumber.* A bona fide claimant is also permitted to exchange timber for lumber for improvements upon his claim, provided he exchanges timber for lumber of equal value, and only so much as is actually necessary for the required improvements, exclusive of the cost of cutting, sawing and hauling such timber or lumber to and from the mill. In other words, he has a right to cut as many trees as may be necessary to make or complete his improvements, whether 30, 40, or more, but any cutting in excess of the number of trees required for the improvements would be unlawful.

§ 5461.1–3 Use of timber on lands covered by grazing leases, by lessees, and others.

(a) Before taking timber under a lease issued under section 15 of the Taylor Grazing Act, as amended by the act of June 26, 1936 (49 Stat. 1978; 43 U.S.C. 315m), the lessee should file application for and procure a permit in accordance with the regulations issued under the acts of June 3, 1878 (20 Stat. 88; 16 U.S.C. 604–606), and March 3, 1891 (26 Stat. 1093; 16 U.S.C. 607), §§ 5400.0–3(c)(1) and 5461.1–1(a) to 5461.1–1(g).

(b) Where application is made by a person other than the lessee to take timber from lands embraced in a grazing lease issued under section 15 of the said act, investigation should be made to ascertain the facts in the case and whether or not the cutting of the timber applied for would adversely affect the lands for grazing purposes. If no objection appears, the permit may issue but should contain a provision that the timber cutting thereunder must be done in such manner as will not interfere with the rights of the lessee.

(c) All applications for timber should be filed with the State Director for the State in which the timber to be cut is located and should comply with the regulations contained in § 5461.1–1.

(Sec. 1, 20 Stat. 88, as amended, 26 Stat. 1003, as amended; 16 U.S.C. 604, 607)

§ 5461.1–4 Free use of timber upon oil and gas leases.

(a) *Application*—(1) *Where to apply.* Any oil and gas lessee, or assignee, desiring timber to be used for fuel in drilling operations on a lease not within a national forest, shall file application therefor, on the prescribed form with the officer who issued the lease.

(2) *Notice of rejection of application; right of appeal.* The applicant shall be notified by registered mail in all cases where the permit applied for is not granted and he shall be allowed 30 days from service of notice within which to appeal from such decision to the Director of the Bureau of Land Management.

(3) *Notice by applicant to settler or entryman.* Where the land involved in the oil and gas lease is occupied by a settler or is embraced in an unperfected homestead entry, the applicant must serve notice by registered mail, on the settler, or entryman, showing the amount and kind of timber he has applied for.

(i) Evidence of service of such notice must be furnished.

(ii) The settler or entryman shall be allowed 30 days from service of notice within which to show cause why the permit should not be granted.

(iii) Permits in such cases will be issued only where there is an abundance of timber on the land, and the removal thereof will not materially affect the use of the land by the agricultural claimant.

(4) *Notice of action on application.* The applicant shall be notified by registered mail in all cases where the permit applied for is not granted and the settler or homestead entryman shall be notified in a like manner before the issuance of the permit in all cases where protests are filed against the issuance of such permit.

(b) *Land subject to permit.* A permit granted under this section shall not embrace any land not included in the oil and gas lease, issued or assigned to the applicant. No permit will be issued where title to the surface has passed from the United States.

(c) *Termination of right to cut timber.* All rights and privileges under a permit issued under these instructions, shall terminate upon the expiration or cancellation of the oil and gas lease, or upon the discovery of oil in sufficient quantity for use as fuel in drilling operations.

(d) *Cutting and use of timber.* Timber cut under a permit issued under § 5461.4 may be used for fuel in drilling operations conducted on the land embraced in the oil and gas lease, and all brush, tops, lops, and other debris made in felling and removing the timber shall be disposed of as best adapted to the protection of the remaining growth, and in such manner as shall be prescribed by the authorized officer and failure on the part of the permittee to comply with this requirement will render him liable for all expenses incurred in putting this regulation into effect.

(e) *Liability of permittee.* Where permits are secured by fraud or timber is not used in accordance with this section, the Government will enforce the same civil and criminal liabilities as in

other cases of timber trespass upon public lands.

(f) *Unauthorized cutting.* The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

§ 5461.2 Act of 1898 (Alaska).

§ 5461.2–1 Free use privilege; cutting by agent.

(a) Except as provided in § 5461.2–4 the only timber which may be cut under §§ 5461.2–1 to 5461.2–6 for free use in Alaska is timber on vacant public lands in the State not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant under this section after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have the right to cut the timber while the permit remains in force as against a subsequent applicant who may wish to obtain the same timber by purchase, except as provided in § 5409.1–5(b).

(b) Free use permits will not be issued where the applicant owns or controls lands having an adequate supply of timber to meet his needs.

§ 5461.2–2 Free use of timber for Government purposes.

Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized Government purposes may procure it from the vacant and unreserved public lands in Alaska free of charge, provided the contracts do not include any charge for the value of the firewood or timber. Where it is desired to procure timber for such use, an application for permit in duplicate on a form approved by the Director must be filed, as in other cases, and a copy of the contract must be attached to the application.

§ 5461.2–3 Permits.

(a) *Application for permit.* Before timber is cut for free use, an application for permit in duplicate on a form approved by the Director must be filed in an office or with an employee of the Bureau of Land Management in Alaska.

(b) *Issuance and cancellation of permit; removal of timber; bond.* (1) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of the official form shall be returned to the applicant showing the approval or rejection of such application.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations in §§ 5461.2–1 to 5461.2–6, or if the permit has been issued erroneously.

(3) No timber shall be removed until the permit is issued. If deemed necessary by the signing officer, a bond, satisfactory to him, may be required as a guarantee of faithful performance of the provisions of the permit and the regulations in §§ 5461.2–1 to 5461.2–6.

(c) *Cutting rules and restrictions.* All free-use timber shall be cut and removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources. In the free-use disposal of timber, the cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production. Moreover, no green timber shall be cut within 300 feet of either side of the center line of a highway or public road, or bordering streams or the shores of lakes designated for recreational use unless specifically authorized by the authorized officer, to prevent or control fungus infection or insect attacks, or for other reasons found sufficient to justify such cutting.

(d) *Amount of timber which may be cut.* During each calendar year each applicant entitled to the benefits of section 11 of the act of May 14, 1898, may take a total of 100,000 feet board measure or 200 cords in saw logs, piling, cordwood, or other timber. This amount may be taken in whole in any one of such classes of timber or in part of one kind and in part of another kind or other kinds. Where a cord is the unit of measure, it shall be estimated in relation with saw timber in the ratio of 500 feet board measure to the cord. Permits to take timber in excess of the amount stated may be granted to churches, hospitals, and charitable institutions upon a showing of special necessity therefor, and with the approval of the authorized officer.

(e) *Notice of completion of timber cutting operations.* Upon completion of the cutting and the removal of the timber, the permittee must notify the State Director, or other forest officer, stating when the work was completed, the land from which the timber was taken, the amount and kind of timber which was cut and removed, and the use to which the timber was put.

(f) *Termination of permit; extensions.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer.

§ 5461.2–4 Timber on withdrawn lands.

Sections 5461.2–1 to 5461.2–6 are inapplicable to timber on withdrawn areas unless the order of withdrawal so permits.

§ 5461.2–5 Trespass; penalty for unauthorized cutting of timber.

The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5461.2–1 to 5461.2–6 will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code, or under State law.

§ 5461.2–6 Appeals.

A party aggrieved by any action involving his application may appeal to the Director of the Bureau of Land Management and the Secretary of the Interior, pursuant to Appeals and Contests contained in Parts 1840 and 1850 of this chapter.

§ 5461.2–7 Governing regulations for free use by oil and gas claimants.

The free use of timber upon oil and gas leases by lessees, authorized by the Secretary of the Interior under authority of section 32 of the act of February 25, 1920 (41 Stat. 450; 30 U.S.C. 189), is governed by § 5461.1–4.

(Sec. 32, 41 Stat. 450; 30 U.S.C. 189)

§ 5461.3 Act of 1947.

§ 5461.3–1 Free use of timber under other statutes.

Free use will be allowed under the following circumstances:

(a) In certain States by settlers on public lands, citizens and bona fide residents of the State, and corporations doing business in the State (§ 5461.1), and

(b) In Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals and charitable institutions (§ 5461.2).

(c) Free-use of timber by Governmental units, nonprofit organizations, and certain mining claimants may be authorized under the act and these regulations only when such applicants cannot qualify under the provisions of §§ 5461.1 to 5461.1–4 and § 5461.2.

§ 5461.3–2 Permits.

(a) *Application for permit.* An application for permit in duplicate, must be made on a form approved by the Director and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit. A free-use permit may be applied for without formal application for the removal of not more than three Christmas trees upon oral or written request.

(b) *Issuance and cancellation of free-use permits; bond.* (1) A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of timber. Free-use permits shall not be issued when the applicant owns or controls an adequate supply of the material to meet his needs. Timber applied for must be for the applicant's own use and may not be bartered or sold. No timber may be cut or removed until the permit is issued.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions or the regulations, or if the permit has been issued erroneously.

(3) A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(4) A free-use permit issued under this part may not be assigned.

(c) *Duration, extension, and termination of permit.* (1) Permits shall be

granted for periods not to exceed 6 months and shall terminate on the expiration dates shown therein unless extended by the authorized officer. An extension not to exceed 3 months may be granted by the authorized officer. The permittee must notify the officer-in-charge upon completion of removal.

(2) Permits issued for the benefit of a mining claimant under authority of the act shall terminate upon transfer of the ownership of the claim by any means. Reapplication must be made by the new claimants.

§ 5461.3–3 Conservation practices.

All free-use timber disposed of under the act shall be severed, or removed in accordance with sound forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed and other values of the land and resources. In the free-use disposal of timber, cutting and removal shall be accomplished in such a manner as to leave the stand in condition for continuous production.

§ 5461.3–4 Removal by agent.

A free-use permittee may procure the timber by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor and money expended in procuring timber and processing it, and no charge shall be made by such agent for the timber itself. No part of the timber may be used in payment for services in obtaining it or processing it.

§ 5461.3–5 Removal of improvements.

Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property and any improvements he has placed on the land, except roads, culverts and bridges are to be left in place, in good condition and will become the property of the United States upon expiration of the 90-day removal period.

§ 5461.3–6 Permits to governmental units.

A free-use permit may be issued to a Federal or State agency, unit, or subdivision, including a municipality, only if the applicant makes a satisfactory showing to the authorized officer that such timber will be used for a public project. The right to remove timber under the permit is not revoked or terminated by (a) any subsequent claim or entry of the lands, (b) by any mining claim located prior to the issuance of the permit if such location was subsequent to July 23, 1955, nor (c) by any other mining claim as to which the Government's right to manage the surface resources has been established in accordance with Group 3400 of this chapter, or other proceedings.

§ 5461.3–7 Permits to non-profit organizations.

A free-use permit issued to a non-profit association or corporation may not provide for the disposition of more than $100 worth of timber to the permittee during any one calendar year. Such permittee is granted a right to remove timber as against a subsequent applicant who may wish to obtain the same timber by purchase. The timber may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, or similar rights obtained under the public land laws.

§ 5461.3–8 Permits to mining claimants.

(a) Free-use timber shall be granted under § 5400.0–3(d) to the record owner of a valid mining claim if such claim was located subsequent to July 23, 1955, or if the Government's right to manage the surface resources has been established in accordance with Group 3400 of this chapter, and he requires more timber than is available to him for prospecting, mining, or processing operations on his claim or claims after disposition of timber from his claim by the United States. The claimant shall be entitled to the free use of timber for such requirements from the nearest timber administered by the Bureau which is substantially equal in kind and quantity to the timber estimated by the authorized officer at the time of application to have been disposed of by the Bureau from the claim. Upon issuance of a patent to the mining claims, the free-use privilege will automatically terminate.

(b) The application required to be filed for free-use timber under this section must contain a statement that the timber applied for will be used for bona fide prospecting, mining, or prospecting operations on the claim or group of claims designated in the application. The applicant must also include a statement that he is the record owner of a valid mining claim or claims from which the timber was originally removed by the Government.

SUBCHAPTER F—RECREATION MANAGEMENT (6000)

Group 6200—Management Procedures

PART 6230—PRACTICES

Subpart 6232—Use of Land

Sec.

6232.1 Revested Oregan and California and reconveyed Coos Bay wagon road grant lands.
6232.1–1 Statutory authority.
6232.1–2 Definitions.
6232.1–3 Competing uses; memoranda of understanding.
6232.1–4 Use of public recreational sites and facilities operated by the Bureau.
6232.1–5 Leases, permits, and licenses.

AUTHORITY: The provisions of this Subpart 6232 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e.

§ 6232.1 Revested Oregon and California and Reconveyed Coos Bay Wagon Road Grant Lands.

§ 6232.1–1 Statutory authority.

The act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a, 1181c), authorizes the Secretary of the Interior, under such rules and regulations as may be necessary and proper, to conserve and manage such portions of the Revested Oregon and California and Reconveyed Coos Bay Wagon Road Grant Lands as are under his jurisdiction, for multiple purposes, including the provision of recreational facilities.

§ 6232.1–2 Definitions.

Except as the context may otherwise indicate, for the terms used in §§ 6232.1—6232.1–5 and in contracts made thereunder:

(a) "Bureau" means the Bureau of Land Management, Department of the Interior.

(b) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant lands and other lands administered by the Bureau under the provisions of the act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a, 1181c).

(c) "Authorized Officer" means the Government official who has been duly authorized to (1) designate O. and C. lands as public recreational sites, (2) to administer the construction, operation and maintenance of public recreation facilities and (3) to administer the use of such sites and facilities through leasing or otherwise.

(d) "Public Recreational Sites" means O. and C. lands possessing special values for some form of intensive public outdoor recreational activity, including but not limited to picnicking, camping, swimming, boating or skiing.

(e) "Public Recreational Facilities" means improvements or structures of any type constructed, operated and maintained in public recreational sites for the enhancement of the public enjoyment of the recreational resources of such sites.

§ 6232.1–3 Competing uses; memoranda of understanding.

(a) In public recreational sites the use and disposal of resources such as timber, minerals, and forage shall be administered in such a manner as to minimize damage to recreational or scenic resources and facilities. Such competing uses shall also be regulated so as to protect routes of access to public recreational sites and to minimize damage to scenic values along such access routes.

(b) Where adequate recreational facilities in a public recreational site are not provided for through lease or permits to state or local government agencies or their instrumentalities under authority of other laws or regulations referred to in § 6232.1–5 such facilities may be constructed, operated and maintained by the authorized officer alone, or under a memorandum of agreement jointly with Federal, state or local government agencies or their instrumentalities.

§ 6232.1–4 Use of public recreational sites and facilities operated by the Bureau.

(a) Public recreational sites and facilities operated by the Bureau shall be for transient use by the public and shall not be occupied by users for extended periods nor in a manner that, in the judgment of the authorized officer, is contrary to the public interest.

(b) The authorized officer may, in his discretion, post reasonable requirements for the use of public recreational sites and facilities operated by the Bureau, including but not limited to provisions to protect the area from fire, protect

recreational values, and to protect the public health and safety.

(c) The authorized officer may establish and collect a reasonable service charge for the use of public recreational sites and facilities operated by the Bureau.

(d) No restrictions on the use of public recreational sites and facilities shall be made because of reasons of race, creed, color or country of origin.

(e) The penalty for wilful violation of any of the provisions of this section or of any reasonable rules or regulations promulgated thereunder may be denial of the use of the public recreational sites and facilities and if the circumstances so indicate, the initiation of an action for trespass on the property of the United States.

§ 6232.1–5 Leases, permits, and licenses.

Leases, permits and licenses for the recreational use of the O. and C. lands, including lands containing recreational facilities may be granted, upon application, under the provisions of Part 9 of this title and Subparts 2232, 2233, and 2236 of this chapter and shall contain provisions determined necessary by the authorized officer, including but not limited to, provisions to protect the area from fire, protect recreational values, and to protect the public health and safety. Leases, permits and licenses which involve the operation of commercial concessions shall contain stipulations requiring conformance with reasonable public service rules including schedules of charges approved by the authorized officer.

SUBCHAPTER G (7000) [RESERVED]

SUBCHAPTER H (8000) [RESERVED]

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9100—Engineering

PART 9180—CADASTRAL SURVEY

Subpart 9180—Cadastral Surveys; General

Sec.

9180.0–2 Objectives.
9180.0–3 Authority.
9180.1 Interpretation of survey records.
9180.1–1 Meridians.

Subpart 9183—Special Surveys

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Subpart 9185—Instructions and Methods

9185.1 Applications.
9185.1–1 Surveys.
9185.1–2 Resurveys.
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9185.2 Requirements for surveys.
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9185.3 Requirements for resurveys; without cost to applicant.
9185.3–1 Eligibility.
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9185.3–3 Majority of land owners.
9185.4 Requirements for resurvey; with cost prorated.
9185.4–1 Estimate of cost.
9185.4–2 Showing required.
9185.4–3 Three-fourths of land owners.

AUTHORITY: The provisions of this Subpart 9180 issued under R.S. 2478; 43 U.S.C. 1201. Additional authority is cited in parenthesis following the sections affected.

§ 9180.0–2 Objectives.

(a) *Alaska; existing surveys and extension thereof.* The surveys up to the present time have been confined to known agricultural areas, the coal fields, and such other lands as have been considered to be suitable for development by settlers or otherwise. The extensions of the surveys to other areas will be governed largely by the character of the lands and their suitability for use, development, and administration under the public land laws applicable to Alaska.

(b) *Resurveys.* The real interest of the Government in the resurvey of the public lands is well stated in the said act of March 3, 1909, "to properly mark the boundaries of the public lands remaining undisposed of." Its duty being thus defined, the Bureau of Land Management will refrain from attempting to do more in the relocation of the corners of privately owned lands in a township being resurveyed than to reestablish such corners from the best available evidence of the original survey.

§ 9180.0–3 Authority.

(a) *Delegation to Director, Bureau of Land Management.* (1) In the establishment of the Bureau of Land Management by Reorganization Plan No. 3 of 1946, the office of Supervisor of Surveys was abolished and the functions and powers thereof were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director, Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of Chief Cadastral Engineer has been abolished, and the functions of that office have been delegated to the Director.

(2) By this sequence, the cadastral surveying work of the Bureau of Land Management has been placed under the immediate jurisdiction of the Director, subject to the direction and control of the Secretary of the Interior. Certain functions relating to specific phases of the cadastral surveying work have been delegated to the State Director.

(b) *Alaska.* The rectangular system of survey of the public lands was extended to the State of Alaska by the act of March 3, 1899 (30 Stat. 1098; 48 U.S.C. 351). The regular township surveys in Alaska conform to that system, but departures therefrom are permitted under the conditions stated in the act of April 13, 1926 (44 Stat. 243; 48 U.S.C. 379), and in certain other cases, such as special surveys for trade and manufacturing sites, headquarters sites, and homesites under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 461), as amended; for soldiers additional entries, pursuant to sections 2306 and 2307 of the Revised Statutes (43 U.S.C. 274, 278); and for small tracts under the act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended.

(1) Administration of the public land surveying activities in Alaska is under the general supervision of the State Director, Bureau of Land Management, at Anchorage, Alaska. The office, in which the records relating to the public land surveys in the State are maintained, is located at Juneau, Alaska. Correspondence relating to local survey matters should be addressed to the State Director, Juneau, Alaska.

(c) *Resurvey of township*—(1) *Without cost to applicant when title to at least 50 percent of the area is in the United States.* The act of March 3, 1909 (35 Stat. 845), as amended by the Joint Resolution of June 25, 1910 (36 Stat. 884; 43 U.S.C. 772), authorizes the Secretary of the Interior to cause to be made such resurveys of the public lands as after full investigation he may deem essential to properly mark the boundaries of the public lands remaining undisposed of.

(2) *Cost to be prorated between applicants and United States, when more than 50 percent of the area is privately owned.* (i) The act of September 21, 1918 (40 Stat. 965; 43 U.S.C. 773), provides authority for the resurvey by the Government of townships heretofore held to be ineligible for resurvey under existing departmental regulations by reason of disposals in excess of 50 percent of the total area thereof.

(ii) Under the act mentioned, and upon the application of the owners of three-fourths of the privately owned lands in any township previously surveyed, or upon the application of a court of competent jurisdiction, accompanied by a deposit of funds sufficient to cover the estimated cost, inclusive of the necessary office work, of the resurvey of all of the privately owned lands in such township, the State Director, Bureau of Land Management, is authorized, in his discretion, to cause to be made a resurvey of the township in question in accordance with the laws and regulations governing surveys and resurveys of the public lands; the cost of the resurvey of the residue of the public lands in such township to be paid by the Government from the current annual appropriation for the survey and resurvey of the public lands in addition to the portion thereof made available for resurveys and retracements by the provisions of the act of March 3, 1909 (35 Stat. 845), as amended by Joint Resolution of June 25, 1910 (36 Stat. 884; 43 U.S.C. 772). The total cost of the resurvey of the township is thus divided between the Government and the petitioners in proportion to the extent of their respective holdings.

(iii) It is further provided that any portion of such deposit in excess of the actual cost of the field and office work incident to such resurvey of privately owned lands shall be repaid pro rata to the applicants for resurvey or to their legal representatives.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9180.1 Interpretation of survey records.

§ 9180.1–1 Meridians.

(a) *Alaska.* The public land surveys in Alaska are governed by three principal meridians established as follows: The Seward Meridian, initiated just north of Resurrection Bay and extending to the Matanuska coal fields; the Fairbanks Meridian, commencing near the town of Fairbanks and controlling the surveys in that vicinity, including the Nenana coal fields: and the Copper River Meridian which lies in the valley of the Copper River and from which surveys have been executed as far north as the Tanana River and south to the Bering River coal fields and the Gulf of Alaska.

(b) *Copies of records.* Copies of plats of surveys in Alaska, or other records of the Public Survey Office, will be sold at the cost of production, in accordance with section 1 of the act of August 24, 1912 (37 Stat. 497), as amended (5 U.S.C. 488), and § 2.4 of this title.

Subpart 9183—Special Surveys

§ 9183.0–2 Objectives.

Information respecting special surveys of soldiers' additional entries, homesites, homesteads, and trade and manufacturing sites is given in Parts 2221, 2233, 2211, and 2213 of this chapter, respectively.

Subpart 9185—Instructions and Methods

§ 9185.1 Applications.

§ 9185.1–1 Surveys.

(a) *Original surveys.* Application for the original extension of the rectangular system of public land surveys to include unsurveyed townships should be filed in duplicate with the State Director for the State in which the lands are situated. The application may be in letter form, and should describe the unsurveyed area by township and range of the public surveys, and should set forth the interest of the applicant in the land and the basis of need for extension of the surveys.

(b) *Lands omitted from original survey.* Application for the survey of an island or other land omitted from the original survey should be made on Form 4–022a, or its equivalent, and filed in duplicate with the State Director for the State in which the lands are situated.

§ 9185.1–2 Resurveys.

(a) *Filing of applications for survey without cost to applicant.* The application prepared in accordance with this part, should be submitted to the State Director for the State in which the lands are situated.

(b) *Filing of applications for survey with cost prorated.* Applications for resurvey based upon the provisions of the act of September 21, 1918, prepared in accordance with this part should be submitted to the State Director for the State in which the lands are situated. Prior to filing formal application, however, the interested parties should obtain from the proper office, as above designated, an estimate of the cost of the proposed resurvey.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9185.1–3 Mining claims.

(a) *Application for survey.* Application for the survey of a mining claim should be filed with the State Director for the State in which the claim is situated.

(b) *Mineral surveyors.* The appointment of mineral surveyors pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39) and § 3445.1 of this chapter, will be made by the State Director; application for such appointment should be made to the appropriate State Director.

§ 9185.2 Requirements for surveys.

§ 9185.2–1 [Reserved]

§ 9185.2–2 Lands omitted from original survey.

(a) *Notice of intended application.* Notice of intention to apply for the survey of an island or other land omitted from the original survey must be served on the adjacent land owners, and the Attorney General and the Secretary of State for the State in which the land is situated, at least 30 days prior to the date of application for survey. Service may be had by registered mail or in person, evidence of which may consist of the registry return receipt or signed acknowledgment of service. A copy of each notice, with proof of service thereof, must be filed with the application. Failure to obtain evidence of service may be explained.

(b) *Form of notice.* No particular form of notice is prescribed. The notice must make it clear, however, that the land covered by the application is contended to be public land of the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the appropriate State Director. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

(c) *Evidence required as to character of land in existence at time of original survey.* An application for the survey of an island or other land omitted from the original survey must be accompanied by evidence showing that the land was in existence and above ordinary high-water elevation when the State was admitted into the Union, and when the adjacent lands were surveyed. Such evidence should consist of statements from at least two persons familiar with the land, as to its size, elevation, and appearance, and the species, size, and age of the timber growth thereon, or nature of other vegetation.

(d) *Diagram required with application.* A diagram showing the approximate configuration of the island or other land applied for, and its location with reference, to the public land surveys, must accompany the application.

(e) *Cost of survey.* In the event of approval of the application, the costs of the survey will be borne by the Government.

(f) *No preference right.* Should the island or other land be surveyed as public land, no preference right to acquire the same under the laws governing the disposal of public lands will be gained by the filing of the application for survey.

§ 9185.3 Requirements for resurveys; without cost to applicant.

§ 9185.3–1 Eligibility.

(a) *Determined by ownership of land.* As a general rule, and in the absence of any particular governmental purpose to be subserved, no township is eligible for resurvey unless title to at least 50 percent of the area of the lands embraced therein remains in the United States. For the purpose of determining the eligibility of a township under this rule, lands covered by approved selections, school sections, and entries upon which final certificates or patents have been issued are to be considered as alienated lands. Townships within the primary limits of railroad land grants are generally ineligible.

(b) *Determined by physical character of remaining public land.* In general no resurvey will be undertaken unless the preliminary examination of the township develops evidence of existing settlement and agricultural possibilities sufficient to support the presumption that the unappropriated lands therein are such as to attract bona fide entrymen, thus eliminating townships which, although theoretically eligible, are of such a physical character that the resurvey thereof would serve no useful purpose.

(c) *Small areas.* In the application of the terms of the act of March 3, 1909 (35 Stat. 845), as amended, is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyors, and the authority of the public survey office will be limited to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Bureau of Land Management are prohibited from participating in the resurvey of a township, the reestablishment of lost corners, or in the subdivision of sections for private parties, even if the expense is borne by the county or municipal authorities or by individuals.

§ 9185.3–2 Showing required.

(a) *Necessity.* The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action, based either upon general obliteration of evidences of the original survey or upon conditions so grossly defective as to preclude the possibility of a reasonably certain identification of the subdivisions of the subsisting survey or a satisfactory local restoration thereof.

(b) *Condition of original survey.* Applications for the resurvey of each township must be supported by evidence in the form of a statement, preferably from the county or other competent surveyor, showing in detail that the evidences of the original survey have been obliterated to such an extent as to make it impracticable to apply the suggestions of the circular issued by the Bureau of Land Management for the necessary restoration of the lines and corners in the proper identification of the legal subdivisions occupied by the present or prospective entrymen or that the obliteration of the original monuments has become so advanced that the land boundaries can be identified only through extensive retracements by experienced engineers of the Bureau of Land Management.

§ 9185.3–3 Majority of land owners.

A majority of the settlers in each township are required to join in the application, and, in addition, there must appear the endorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. Where an entryman or owner, including the State, has failed for any reason whatsoever to join in the application, evidence of service of notice upon him for at least 30 days in advance of the filing of the application is required in order that he may be afforded ample opportunity to make timely protest against the granting of such resurvey if in his opinion such action is undesirable.

§ 9185.4 Requirements for resurvey; with cost prorated.

§ 9185.4–1 Estimate of cost.

(a) The cost of resurvey procedure is as a rule considerably in excess of that incident to the execution of original surveys and may range between rather wide limits. Where the obliteration is not excessive and the evidences of the original survey are harmoniously related, extensive verifying retracements will be unnecessary and ordinary dependent methods of resurvey can usually be applied. If, however, the obliteration is general or total, many miles of preliminary retracement may be required in order to obtain technical control, and where, by reason of errors in the original survey, the existing evidences thereof are discordant and conflicting locations have resulted, the procedure required may, in the case of densely entered townships, involve an expense of $5,000 or more per township.

(b) The applicants for resurvey should understand, therefore, that although the estimate supplied will be as nearly correct as the available information will permit, its accuracy cannot be guaranteed, and, consequently, all such estimates are subject to revision, if necessary, as the work proceeds and the field conditions are more fully developed. Any deposit in excess of actual cost will be returned to the applicants as provided by law, but in cases where the cost exceeds the deposit made in accordance with the estimate, an additional deposit will be required, failing which, operations will be suspended.

(c) In the application of the terms of this act it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyor, and the authority of the State Director will be restricted to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Government are prohibited from participating in the resurvey of a township or the reestablishment of lost corners or in the subdivision of sections for private parties, even if the expense is borne by the county or State authorities or by individuals, except as such action is specifically authorized by the Director, Bureau of Land Management, in accordance with the provisions of existing statutes.

(d) Deposit required: The deposit required of the petitioners by law must accompany the application and must be made in the amount, at the place and in the manner prescribed by the instructions which will accompany the estimate.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9185.4–2 Showing required.

(a) *Necessity.* The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action. In general, it must be shown that the evidences of the original survey are so widely obliterated or that the prevailing survey conditions are so grossly defective as to preclude the satisfactory identification of the subdivisions of the subsisting survey or that the evidences of the original survey are in such an advanced state of deterioration that action looking to their preservation and perpetuation is expedient as in the public interest.

(b) *Ownership of land.* The applicants for resurvey are required to preface their petition by the statement that the extent of privately owned lands within the township is in excess of 50 percent of the total area thereof. If necessary, information in this connection may be obtained by the petitioners from the manager of the land office having local jurisdiction. Failure to comply with the condition set forth in this section or material error in the showing made, will not only result in delaying action upon the petition, but may require its rejection if it is found that the township is not properly subject to resurvey under the terms of the governing act.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9185.4–3 Three-fourths of land owners.

The owners of three-fourths of the privately owned lands within the township are required to join in the application, and all petitioners in whom ownership is vested, either individuals, the State, or corporations such as railroad companies whose interests are involved, are further required to supply, following their respective signatures, an accurate description by legal subdivision, section, township, and range of the lands to which title is claimed. Moreover, it must appear that notice of the proposed resurvey has been served upon all owners who have for any reason failed to join in the petition, and, in addition, it is highly desirable that all record entrymen who, under the terms of the act are not required to become parties to the petition, be similarly informed to the end that their objections, if any, may be heard and subsequent protest based upon the plea of ignorance may, insofar as possible, be avoided.

(40 Stat. 965, as amended; 43 U.S.C. 773)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

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AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 9239—Kinds of Trespass

§ 9239.0–3 Authority.

(a) Sections 9239.0–3 to 9239.7 are issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(b) In addition to liability for trespass on the public lands, as indicated in this part, persons responsible for such trespass may be prosecuted criminally under any applicable Federal law. Penalties are prescribed by the following statutes:

(1) Timber trespass. 18 U.S.C. 1852, 1853.

(2) Turpentine trespass. 18 U.S.C. 1854.

(3) Coal trespass. 18 U.S.C. 1851.

§ 9239.0–7 Penalty for unauthorized removal of material.

The extraction, severance, injury, or removal of timber or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts.

§ 9239.0–8 Measure of damage.

The rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of Mason et al. v. United States (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed.

§ 9239.0–9 Sale, lease or permit to trespassers.

(a) For the purpose of this section, a trespasser is a person who is responsible for the unlawful use of or injury to property of the United States.

(b) No sale of timber or material will be made, and no permit or license will be issued, to a trespasser who has not satisfied his liability to the United States, except where:

(1) The Government has seized the materials cut, harvested, removed, or mined in trespass and the sale is made to the person who allegedly committed the trespass, at not less than the appraised value of the materials at the time of seizure, and without relieving the trespasser of liability for trespass damages to the extent that such damages exceed the amount paid for the materials; or

(2) The alleged trespasser files a bond conditioned upon payment of the amount of damages found by the authorized officer, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or

(3) The authorized officer finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability, or as to the extent of liability, or that the extent of the damages has not yet been determined, and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States; or

(4) The authorized officer finds in writing that:

(i) There is no other qualified bidder or that no other qualified bidder will meet the high bid, and

(ii) The sale or lease to the alleged trespasser is necessary to protect substantially the interest of the Government, either by preventing deterioration of or damage to the resource to be sold or loss or damage to other resources, or by accepting a highly advantageous price, and

(iii) The timber management or other resource management program of the Government will not be adversely affected by the sale.

§ 9239.1 Timber.

§ 9239.1–1 Unauthorized cutting.

(a) The cutting or removing of the timber referred to in §§ 5461.1 to 5461.1–4 of this chapter in any other manner than that authorized by such sections will be considered a trespass.

(b) The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

(c) Where permits are secured by fraud or timber is not used in accordance with § 5461.1–4 of this chapter the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

§ 9239.1–2 Penalty for unauthorized cutting of timber.

The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5461.2 to 5461.2–6 of this chapter will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code, or under State law.

§ 9239.1–3 Measure of damages, when not prescribed by State law.

For timber trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Where the trespass is willful, the full value of the property at the time and place of demand, or of suit brought, with no deduction for labor and expense.

(b) In case of innocent trespasses neither the trespassers nor their transferees shall be required to pay more than the stumpage value, or the value of the timber in standing trees taken by them, as damages to the Government.

(c) In case of a purchase without notice of wrong from a willful trespasser, the value at the time of purchase.

§ 9239.2 Unlawful enclosures or occupancy.

§ 9239.2–1 Enclosures of public lands in specified cases declared unlawful.

(a) Section 1 of the act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061), declares any enclosure of public lands made or maintained by any party association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made" to be unlawful and prohibits the maintenance of erection thereof.

(b) Section 4 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1271; 43 U.S.C. 315o) provides:

> Fences * * * and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve.

(c) Section 10, paragraph (4) of the Federal Range Code, § 4112.3 of this chapter, containing rules for the administration of grazing districts prohibits "Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit."

(d) Section 2 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1270; 43 U.S.C. 315a), provides that "any willful violation of the provisions of this act" or of "rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500."

(e) Violations of any of the provisions of the act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064).

§ 9239.2–2 Duty of district attorney.

Section 2 of the act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1062, 28 U.S.C. 41, Par. 21), provides that it shall be the duty of the district attorney of the United States for the proper district on affidavit filed with him by any citizen of the United States that such unlawful enclosure is being made or maintained, showing the description of the lands enclosed with reasonable certainty so that

the value at the time of purchase.

showing the description of the lands enclosed with reasonable certainty so that

the enclosure may be identified, to institute a civil suit in the proper United States district or circuit court or territorial district court in the name of the United States and against the parties named or described who shall be in charge of or controlling the enclosure complained of.

§ 9239.2–3 Responsibility for execution of law.

The execution of this law devolves primarily upon the officers of the Department of Justice, but as it is the purpose to free the public lands from unlawful enclosures and obstructions, it is deemed incumbent upon the officers of the Department of the Interior to furnish the officers of the Department of Justice with the evidence necessary to a successful prosecution of the law.

§ 9239.2–4 Filing of charges or complaints.

All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper State Director. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

§ 9239.2–5 Settlement and free passage over public lands not to be obstructed.

Section 3 of the act of February 25, 1885 (23 Stat. 322; 43 U.S.C. 1063), provides that no person by force, threats, intimidation, or by any fencing or enclosing or any other unlawful means shall prevent or obstruct or shall combine or confederate with others to prevent or obstruct any person from peaceably entering upon or establishing a settlement or residence upon any tract of public land subject to settlement or entry under the public land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands.

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures indicated in §§ 4113.1–1, 4113.1–3 (a), (c), (d), 4113.1–4, and 4113.1–7 of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 4113.1–1, 4113.1–3 (a), (c), (d), 4113.1–4, and 4113.1–7 of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been willful and the range manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires

it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c)(2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

§ 9239.3–3 Alaska.

(a) *Reindeer.* (1) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in Subpart 4132 of this chapter, is unlawful and is prohibited.

(2) Any person who wilfully violates any of the rules and regulations in Subpart 4132 of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

(b) *Livestock.* (1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 4131.2–7(g) and (h) of this chapter. Under section 2 of the act, any person who wilfully grazes livestock on public lands without authority, shall, upon conviction, be punished by a fine of not more than $500.

(2) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer he will close the case, if satisfactory showing is not made within the time allowed, the violation alleged in the notice will be deemed to have been wilful.

(3) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damage to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the foregoing values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if susceptible to proof by reasonably available and reliable data; otherwise, a minimum charge of $2 per animal unit month for trespass not clearly wilful will be made. Where the trespasses are repeated and/or wilful, a minimum charge of $4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations found within § 4131.0–3 et seq. of this chapter in the amount of $2,000 or less may be accepted by the authorized officer. Offers for settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for consumed forage and damage involved until finally accepted by the authorized officer or the State Director, and in no event will it relieve the violator of criminal liability. No lease or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

§ 9239.5 Minerals.

§ 9239.5–1 Ores.

(a) For ores trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) Measure of damages is the same as in the case of coal. Benson Mining and Smelting Co. v. Alta Mining and Smelting Co. (145 U.S. 428, 36 L. ed. 762; Durant Mining Co. v. Percy Consolidated Mining Co. (93 Fed. 166).

§ 9239.5–2 Oil.

For oil trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) *Innocent trespass.* Value of oil taken, less amount of expense incurred in taking the same.

(b) *Willful trespass.* Value of the oil taken without credit or deduction for the expense incurred by the wrongdoers in getting it. Mason v. United States (273 Fed. 135).

§ 9239.5–3 Coal.

(a) *Determination of payment in coal trespass.* For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) For innocent trespass, payment must be made for the value of the coal in place before severance. United States v. Homestake Mining Company (117 Fed. 481).

(2) For willful trespass, payment must be made for the full value of the coal at the time of conversion without deduction for labor bestowed or expense incurred in removing and marketing the coal. Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company (203 Fed. 795). The mining of coal in trespass is presumed to be willful, in the absence of persuasive evidence of the innocence and good faith of the trespasser. United States v. Ute Coal and Coke Company (158 Fed. 20).

(b) *Coal mined by permittee, lessee, or licensee.* All coal mined either under a pending application for permit, lease, or license, or without such pending application, is a trespass and the coal so mined must be settled for on a trespass basis. However, where a permittee applies, prior to the expiration of his permit, for a lease, the mining of coal by him from the date of the filing of the lease application to the date of the issuance of the lease, or, if the lease application is rejected, to the date of notice to him of the final rejection of his application does not constitute a trespass.

(c) *Coal mined by successful bidder at public sale.* The successful bidder at public sale for a coal leasing unit does not acquire any right to mine coal until he has complied with all the formalities required by the regulations, including the furnishing of a bond, and a lease has been issued to him. Coal mined by such applicant prior to the date of the issuance of a lease is in trespass and must be paid for on a trespass basis.

(d) *Coal permit, lease, or license not to issue until trespass account settled.* No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until the trespass account is settled.

(e) *Right of surface owner to mine coal for domestic use.* The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or under the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

§ 9239.6 Materials.

§ 9239.6–1 Turpentine.

For turpentine trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) *Innocent trespass.* Value of the gum and injury done to the trees. United States v. Taylor (35 Fed. 484).

(b) *Willful trespass.* Value of the product manufactured from the crude turpentine by the settler, or any person into whose possession same may have passed, without credit for labor bestowed on the turpentine by the wrongdoer. Union Naval Stores Co. v. United States (240 U.S. 284, 60 L. ed. 644).

§ 9239.7 Right-of-way.

§ 9239.7–1 O&C lands.

The mere filing of an application under Subpart 2234 of this chapter does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the authorized officer and delivered to the applicant. Any unauthorized use of O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Where there has been such a trespass, no permit shall be issued to the alleged trespasser unless (a) the trespass claim is fully satisfied; or (b) the alleged trespasser files a bond conditioned upon payment of the amount of damages found by the State supervisor, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or (c) the State Director finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability or as to the extent of his liability and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States.

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